TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 222.

DAVID WELLS, THOMAS BALLANTYNE, CHARLES M. GILBERT, JOHN H. GILBERT, WILLIAM KEHOE, HENRY BLUN, DANIEL G. PURSE, ROBERT McINTYRE, MARY E. DOUGLASS, AND DENNIS O'CONNELL, PLAINTIFFS IN ERROR,

vs.

THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH AND ROBERT J. WADE, CITY MARSHAL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

FILED MARCH 10, 1900.

(17,669.)

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INDEX.

	Original	Print.
Transcript from superior court at Chatham county, Georgia	1	1
Petition	1	1
Exhibit A—Schedule of lots, &c.	14	9
B—Valuation of lots, &c.	15	10
C—Statement of taxes paid	16	11
Order to show cause	17	12
Process	17	12
Answer	18	13
Exhibit A—Form of deed	29	19
B—Form of deed	33	21
Judgment	38	24
Certificate of clerk of superior court	39	24
Certificate of clerk of supreme court	40	25

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	Original.	Print
Bill of exceptions	41	25
Proceedings of the council	42	26
Ordinance of September 28, 1790	44	28
Notice of sale of lots, June 13, 1799	47	30
Act of December 21, 1823	48	31
Act of December 24, 1825	48	31
Minutes of March 28, 1850	48	31
Ordinance laying off into lots Springfield plantation	49	32
Section 3 of ordinance of April 20, 1801	50	33
Ordinance of February 27, 1851	51	34
Ordinance of July 31, 1851	51	34
Deed from city to Solomon, March 1, 1860	53	35
Form of original transfers	54	36
Proceedings of the council	55	37
Memorandum of "fee-simple" lots	62	44
"ground-rent" lots	63	45
taxes collected from plaintiffs	64	46
Report of city marshal as to sales	65	47
Proceedings of the council	66	47
Ordinance of January 24, 1842	74	55
Minutes of January 17, 1872	75	56
Ordinance of May 29, 1878	76	56
Deposition of George W. Wylly	77	57
Alfred Haywood	80	60
George N. Nichols	81	61
John Kelly	82	62
John C. Rowland	83	62
Thomas Daniels	83	62
Assignment of errors	85	63
Statement of necessary parts of record	89	67
Judge's certificate to bill of exceptions	89	67
Certificate of superior court clerk to bill of exceptions	90	67
Certificate of supreme court clerk to bill of exceptions	91	68
Opinion	92	68
Clerk's certificate to opinion	99	72
Judgment	100	72
Clerk's certificate to transcript	101	73
Writ of error	102	73
Citation	104	74
Service of citation	105	74
Petition for writ of error	106	75
Order allowing writ of error	108	76
Bond	109	76
Assignment of errors	110	78
Clerk's certificate to writ of error, citation, and record	115	81

1 STATE OF GEORGIA, }
Chatham County. }

To the superior court of said county:

The petition of David Wells, Thomas Ballantyne, Charles M. Gilbert and John H. Gilbert, William Kehoe, Henry Blun, Daniel G. Purse, Rob't McIntire, Mrs. Mary E. Douglass, and Dennis O'Connell, who sue for themselves and all others who may come into said cause and become parties hereto and contribute to the costs and expenses hereof, respectfully shows:

That your petitioners are holders of certain lots of land in the city of Savannah, county of Chatham and State of Georgia, known as "City lots" or "Leased lots," the lots and respective holders being set out more fully in the exhibit or schedule hereto annexed, marked "Exhibit A," which is made a part of this their petition, and to which your petitioners pray leave to refer as occasion may require.

And your petitioners show that the lots held by them respectively were granted or leased by the mayor and aldermen of the city of Savannah under the terms hereinafter mentioned, and that your petitioners are the assignees or grantees holding under transfers from those who made the original contract with the said corporation, and hold their respective lots under the original contract of lease.

Your petitioners further show that the said lots of land were originally a part of the common attached to the city of Savannah, which was from time to time divided into lots and squares with street intersections in conformity to and corresponding with the original plan of said city, and were disposed of by the mayor and aldermen of the city of Savannah and hamlets thereof, the first of said sales having been made under and by virtue of an act of the General Assembly of the State of Georgia approved February 10th, 1787, authorizing the then wardens of the city of Savannah
2 to let, lease, or rent at public sale any lot or lots of land and other specific property in said city, and by virtue of an ordinance passed in council on the twenty-eighth day of September, 1790, whereby all of the east and a part of the west common situate and lying between Bay and Broughton streets, extending easterly and westerly to public streets one hundred feet in width, were divided into eighty (80) lots on the east and forty (40) lots on the west, and were disposed of under the following terms and conditions:

The said lots were valued, according to an estimate or schedule, from one hundred and sixty pounds to forty pounds sterling money, and the ground rent for the same was to be in proportion and after the rate of five pounds sterling money per annum on every one hundred pounds value—that is to say, at the rate of five per cent. per annum on the valuation, the purchaser having the option of paying down the valuation money or to hold his purchase on ground rent payable quarterly, and in the event the purchase-money was paid down the purchaser became entitled to the absolute estate in

fee-simple; but in the event of the purchaser electing to hold his purchase on a ground rent the use and occupation of the premises were forever secure to the purchaser and others claiming under him on payment of the ground rent, but upon failure to pay the said ground rent, at the expiration of fifteen days' notice after the same became due, the said premises were to revert to the said mayor and aldermen of the city of Savannah, who should immediately thereafter possess the power of re-entry, and having by means of its proper officer exercised such power and given the proper notice thereof in writing posted on the premises, the lot or lots so entered upon, with all the improvements thereon, were to be considered, at the expiration of ten days thereafter, as absolutely revested in the said mayor and aldermen of the city of Savannah.

Your petitioners further show that from time to time other
3 portions of the city common were laid out into lots and the said lots sold upon the same terms substantially and essentially as are contained in the ordinance of September 28th, 1790; which said sales, "whether in fee-simple or otherwise," were confirmed by an act of the General Assembly of the State of Georgia, approved December 21st, 1822.

Your petitioners further show that the said corporation executed and delivered to said purchasers as elected to hold their purchase on ground rent a deed of lease whereby the said corporation conveyed to the said purchaser the premises so purchased by him, to him, his executors, administrators, and assigns, forever, on this express condition: that said purchaser should pay by four equal and quarter-yearly payments into the city treasury of Savannah aforesaid the sum of — dollars as ground rent for the use and occupation of said lot and premises, and in case of failure herein for the space of — days after any of the quarterly payments shall become due the said lot and premises to revert to the corporation, who shall immediately thereafter possess the power of re-entry, and, having by means of its proper officer exercised such power and given the notice in writing posted on the premises, said lot, with all improvements thereon, shall be considered at the expiration of ten days thereafter as absolutely revested in the corporation and the estate created determined to all intents and purposes as fully as if the same had not been bargained for or purchased; and the purchaser, for himself, his heirs, executors, and administrators, in said deed covenanted and agreed with the said mayor and aldermen of the city of Savannah that the annual ground rent shall be well and truly paid into the city treasury by quarterly payments aforesaid, and in case of failure it should be lawful for such re-entry to be made and such proceedings be used as under and by said ordi-
nance and the condition aforesaid are pointed out and
4 directed; and it was in said instrument declared to be the true intent and meaning thereof and of the parties to the same that on the payment of the said ground rent at the times and after the manner hereinbefore prescribed and directed that the said purchaser, his heirs, executors, administrators, and assigns, should and might from time to time and at all times thereafter

peaceably and quietly have, hold, use, occupy and possess, and enjoy the lot and premises and receive and take the rents, issues, and profits thereof to his own use absolutely, without let, suit, trouble, eviction, or denial of the said corporation or of any person or persons whatsoever acting under it or by virtue of its authority, subject only to such assessments and burdens as should be common to other lot-holders in said city.

And it was further provided and agreed that it should at any future time be in the power of the purchaser, his heirs, executors, administrators, or assigns, if he or they should so incline, to pay the valuation money to the city treasurer, with what rent may be due up to that time, in full discharge and extinguishment of said ground rent, and upon said payment, evidenced by the receipt of the city treasurer, there shall then and from thenceforth vest the absolute estate in fee-simple in said lot and premises in the purchaser, his heirs and assigns, to his and their only proper use and behoof forever.

And your petitioners further show that upon the execution and delivery of the said instrument or deed of lease that the relation of landlord and tenant thereby became established between the said corporation and the holders of said lots, the absolute title remaining in the corporation, and the holders obtaining a perpetual lease to them, their executors and assigns, so long as they should pay the rent.

Your petitioners aver that the said corporation intended
5 to reserve the fee-simple title to said lots when the option of the purchaser was declared to be to hold the same under rent, and to convey to the purchaser only an assignable perpetual lease, determinable only on default in the payment of rent; that there was no other ground or right of forfeiting reserved in the lease or in the ordinance under which said lots were leased or sold, as the option of the purchaser might determine.

Your petitioner- further show that such has been the uniform, continuous, and expressed construction placed on the tenure by which said lots are held by the said corporation from the time of the first letting by public sale until the present time.

And your petitioners show that the present board of mayor and aldermen have assumed a different attitude towards the holders of said lots.

Your petitioners further show that said lots have commonly been designated by the said corporation in its various ordinances as "lots held under lease;" that the act of 1822, ratifying the disposition of the said town common made up to that time by said city, recognized the distinction or difference between such lots as were disposed of in fee-simple and those not so disposed of; that the published and authorized reports of the mayors of the city of Savannah have declared the said lots to be property of the city, leased by it, and rendering a certain annual rent, and not subject to taxes, and the said corporation has exercised the legal right of landlord appertaining to that relation and estate at law not set forth in the instrument of lease by declining to sublet or recognize

subtenants except in such subdivisions of said lots as the said corporation choose to permit.

And your petitioners further show that at the time of the sales or leasing at public outcry the said corporation did, by its officers thereto duly authorized, publicly announce to the bidders that lots disposed of under ground-rent plan were not subject to city taxes, and the said corporation from the time of the sale of said lots under lease up to this time have collected regularly the ground
6 rents due for said lots, having retained the absolute title, and have from time to time, upon default in the payment of ground rent, exercised its right as landlord and owner to re-enter upon the premises, to determine the estate of the tenant, and to retake and resume possession of said lots, and have never before attempted to levy and collect a city tax upon any of said lots so held under ground rent.

Your petitioners further show that the fee-simple title of the said lots being in the said corporation, and the holders thereof being in fact and virtually tenants thereof, that the said lots are subject only to the payment of the annual ground rent to the city of Savannah, and are not subject to the payment of any other charges to the city of Savannah, and have always been free from taxation by said corporation, and cannot be taxed by said corporation nor any other revenue derived to said corporation from the said lots then the ground rent reserved under the ordinances and the deed of lease.

Your petitioners further show that under the express covenant in the said lease the said corporation warrants to the holders of said lots uninterrupted use, occupation, and enjoyment of the same to their own use absolutely without any let, suit, trouble, eviction, or denial from the corporation so long as they shall pay ground rent on the same whenever the same shall become due, and that the said corporation reserved no right or power than the collection of the ground rent and the right to re-entry in case of default in the payment of the same.

That the covenant in said instrument that the same shall be subject only to such assessments and burdens as are common to other lot-owners did not refer to any taxes that might be levied by the city of Savannah, but only to such assessments and burdens as the city of Savannah might be called upon to bear as the owner of said lots in common with the holders of other lots, which assessments and burdens the said holders of said ground rent lots have always
7 assumed and borne, so that the said corporation has received its rent in full and without any deduction or diminution by reason of any assessment or burden made on said lots in common with other lot-holders.

Your petitioners further show that this was the intention and meaning of the said instrument, and such was the construction and interpretation placed upon the same by the said mayor and aldermen of the city of Savannah from the time of the first sale of said lots and the execution of the deeds therefor in January, 1791, up to the time of the attempt of the present board of mayor and aldermen

to levy and collect a tax upon said lots in addition to the ground rent received therefor.

Your petitioners further show that the first ordinance which was passed by said corporation for the purpose of levying a tax upon the real estate in said city was the one adopted on the seventh (7th) day of April, 1806, which ordinance did attempt to levy a tax upon said lots held under lease from said corporation, with all other lots, improved and unimproved, in said city, but that before said ordinance was enforced or any taxes assessed and levied thereunder the same was referred to a special committee of council to report upon the same what amendments were necessary, and after mature consideration the committee reported by an amended ordinance, which was adopted on the twenty-fourth day of November, 1806, which declared that lots held under lease from said corporation should be exempt from city taxes; which declarations and admissions on the part of the mayor and aldermen of the city of Savannah that said lots were not subject to taxation *was* reiterated and declared in the various ordinances levying taxes upon real estate in the city of Savannah and passed in council from the twenty-fourth day of November, 1806, until the right of exemption from taxation by virtue of the relation existing between the said corporation and the holders of said lots, and the said interpretation and construction of said contract had become fully estab-
8 lished and recognized; so that thereafter the taxes were levied upon taxable property, except such as are exempt from taxation by law.

Your petitioners further show that the construction placed upon the instrument by the corporation was reiterated and declared by the said corporation through its mayor and chief executive officer in his annual reports from time to time, whereby and wherein the said lots, known as ground-rent lots, were published and reported as being a portion of the "city domain" belonging to said corporation and forming a part of its assets and resources held under ground rent and not subject to taxation and producing a revenue from rent and not from taxation.

Your petitioners further show that your petitioners, relying upon the said ordinances and said contract and the said construction and interpretation placed thereon, and the other continuous, uninterrupted observance of the same, purchased at the time mentioned in said schedule the said several lots respectively owned by them, paying a valuable consideration, because said lots were subject only to ground rent and fixed charge, and have held the same under the said original contract, subject to said ground rent and free from city taxes, and that they have been in the quiet, peaceable possession of the same from the time of the purchase of the same, and have paid the ground rents, and are entitled to continue in the peaceable possession of the same without let, suit, trouble, eviction, or denial by the said corporation.

Your petitioners further show that the present board of mayor and aldermen of said corporation under the plea that it is their duty to impose a tax upon the same, not regarding the original

contract and the continuous, uninterrupted observance thereof by said corporation for a century, without warrant or authority and contrary to said contract and to the absolute impairment of the same, caused the said lots of your petitioners to be assessed
9 at a valuation greatly in excess of the valuation money mentioned in the original conveyance of lease, and have caused to be levied executions to collect a tax of one and one-half per cent. on said increased values in addition to the said ground rents, under the general tax ordinance of said city passed in council December 27, 1889, and have caused executions to be actually levied upon city lots held under the contract of lease aforementioned by your petitioners Daniel G. Purse, Charles M. Gilbert and John H. Gilbert, Henry Blun, and Robert McIntire, and threaten to proceed to levy upon the lots held by all of your petitioners and other holders of ground-rent lots to enforce the collection of said taxes.

First Amendment.

Your petitioners further show that the ordinance passed by the said mayor and aldermen imposing a tax upon the said ground-rent lots impairs the obligation of the contract made by the said mayor and aldermen under the ordinance and conveyance when said lots were originally disposed of by the said mayor and aldermen, and that said ordinance is unconstitutional, illegal, and void.

Amendment allowed.

In open court, April 25, 1898.

R. FALLIGANT, *Judge.*

Your petitioners further show that by virtue of said ordinances and the said deed of lease and the interpretation placed thereon by said corporation and the said lot-holders the said corporation has no power or authority to levy any tax upon property to which it retains the title and from which it derives revenue from
10 the rental thereof; and the said corporation, by the declarations in its ordinances from time to time adopted that said lots are not subject to taxation by the city, declarations made in its annual reports by the mayor of said city, and by the announcements made at the time of the sale of said lots by the city authorities authorized to make such sale, that said lots, if purchased upon the ground-rent plan, were not subject to taxation, and by the continuous exemption from taxation by said corporation, confirming the contract, declarations, and announcements, and by reason of the purchase by your petitioners of the said lots on account of such construction, interpretation, declarations, and announcements, the said corporation is forever estopped from attempting to levy any tax upon said property so long as the same is held under said lease and subject to ground rent.

Your petitioners further show that they have paid all city taxes on the improvements erected or owned by them on the said lots and do not owe the said corporation any amount whatever.

And your petitioners further show that under and by virtue of an execution issued by Charles S. Hardee, city treasurer, Robert

J. Wade, city marshal, has levied upon the property of your petitioners Daniel G. Purse, Charles M. Gilbert and John H. Gilbert, Henry Blun, and Robert McIntire to collect the amount of taxes alleged to be due upon the said lots of your petitioners last named held under lease from said corporation as aforesaid, and is about to make a levy of executions against your other petitioners based upon said alleged taxes claimed to be due by said corporation on the lots of your petitioners held under lease from said corporation as aforesaid.

11 *Second Amendment.*

Your petitioners further show that since the filing of their said petition praying for injunction and relief, their application for temporary injunction against the mayor and aldermen of the city of Savannah to restrain said municipal corporation from collecting the tax imposed by it upon the said city lots held by your petitioners and all other such lot-holders represented by your petitioners was refused, and the said city has collected, under execution and under protest of the said lot-holders, a large amount of taxes levied and assessed against said city lots, to wit, taxes on the sum of $1,340,640 or other large sum, aggregate valuation as per statement annexed, marked Exhibit "B," to which reference is prayed.

Your petitioners further show that the assessment, levy, and collection of said tax was illegal and in violation of the contract made by the said municipal corporation in the disposal of said city lots, which contract is fully set forth in the original petition filed by your petitioners, and that the same has been paid under duress.

Your petitioners further show that the amount of taxes paid by them respectively is more specifically set forth in the statement hereto attached, marked Exhibit "C," to which reference is prayed, amounting in the aggregate to six thousand seven hundred and fifty-five $\frac{85}{100}$ dollars.

Your petitioners pray that the amount due to your petitioners and all other holders of ground-rent lots represented by your petitioners in their petition may be ascertained by an auditor to be appointed by this honorable court, and that a judgment and decree may be entered up against the said mayor and aldermen of the city of Savannah in favor of your petitioners for the
12 amount that may be found to be due to them for said taxes so collected from them and received by the said defendant, with interest thereon.

Amendment allowed.

In open court, April 25, 1898.

R. FALLIGANT, *Judge.*

Wherefore your petitioners pray that the said mayor and aldermen of the city of Savannah be perpetually enjoined against levying the said executions, and that the said assessment of a city tax upon the said city lots so long as they shall be held under ground rent from the said corporation be decreed to be null and void, and

that the said mayor and aldermen of the city of Savannah be prohibited and enjoined from assessing any city tax on said ground-rent lots leased from said corporation so long as the same are held under lease from the said mayor and aldermen of the city of Savannah or from assessing and collecting any of the taxes levied under the tax ordinances of said city on said lots so long as they are held under leases from said city, and that your petitioners may have such other and further relief in the premises as the case may require or to this court shall seem meet and proper.

And your petitioners pray a temporary injunction or restraining order restraining the said mayor and aldermen of the city of Savannah and the said Rob't J. Wade, city marshal, from advertising or exposing for sale the said lots so levied on, as aforesaid, or from making any other levies on the property of your petitioners until the further order of this court.

And that process may issue requiring the said mayor and aldermen of the city of Savannah and Robert J. Wade, city marshal, to be and appear at the next term of the superior court of
13 Chatham county, then and there to answer your petitioners in the premises, discovery being expressly waived, and to stand to, abide by, — perform whatever this honorable court may order and decree in the premises.

J. R. SAUSSY,
Petitioners' Attorneys.

STATE OF GEORGIA, }
Chatham County. }

Personally appeared C. M. Gilbert, one of the plaintiffs in said petition, who, being sworn, says that the facts contained in the foregoing petition so far as the same concern his own act and deed are true of his own knowledge, and so far as concerns the act or deed of any other person he believes them to be true.

CHARLES M. GILBERT.

Sworn to and subscribed before me this 26 July, 1890.

R. D. WALKER, JR.,
Notary Public, Chatham County, Ga.

Petitioner.	Lot number and ward.	When sold by city.	When purchased by petitioner.		Valuation.	Increase money.	Total.
David Wells	46, Calhoun, 1	September 8, 1866		1	$1,700	$140	$1,840.00
	E. ½ 36, Chatham, 2	February 25, 1851		2	800	110	910.00
	E. ½ 61, Brown, 3			3	800	1	801.00
	37, La Fayette, 4	April 22, 1851		4	900	325	1,225.00
	30, Troup, 5	November 10, 1851		5	600	31	631.00
Thomas Ballantyne	66, Crawford	October 4, 1855		6	800	100	900.00
Charles M. Gilbert and John H. Gilbert.	W. ½ No. 7, Franklin, 7	January 13, 1791		7	750	304.28	1,054.28
	No. 8, Franklin, 8	January 13, 1791		8	685.71	45	730.71
William Kehoe	E. ½ 22, Columbia, 9	June 13, 1799		9	600	621	1,221.00
	E. part 30, Columbia, 10	June 18, 1799		10	200	650	850.00
Henry Blun	15, Crawford, E, 11			11	1,200	420	1,620.00
	10, Troup, E, 12	March 5, 1853		12	600	405	1,005.00
Daniel G. Purse	W. ½ 58, Brown, 13	November 18, 1830		13	600	1	601.00
Robert McIntire	E. ½ 19, Elbert, 14	June 2, 1801		14	700	75	775.00
	34, Franklin, 15	January 19, 1791		15	600	27.85	627.85
	E. ½ 6, Green, 16	August 15, 1799		16	200	516.00	716.00
	17, 18, 23, Liberty, 17	June 17, 1799	19	17	600	330	930.00
				18	600	340	940.00
				20	600	305	905.00
Mrs. Mary E. Douglass	5, Washington, 18	January 13, 1791		18	385.71	42.86	428.56
	E. ¾ 40, La Fayette, 19	April 24, 1853		19	950	355	1,305.00
Dennis O'Connell	½ 10, Warren ward, 20	January 13, 1791		20	300	643	306.43

15 "B."

Valuation of Ground-rent Lots.

Taken from city tax digest, exclusive of value of improvements.

	1890.	1891.	1892.	1893.	1894.	1895.	1896.	1897.
a	18750	15750	7850	7550	7550	7550	7250	7650
b	89040	92290	77490	77420	78170	80370	76855	74770
c	141670	146520	145870	139620	145370	148570	137420	141920
d	121850	126350	93050	99300	80400	87600	97000	91300
e	30300	30300	29300	24900	20900	24700	20700	27900
f	66500	66500	61850	72050	71050	71050	71050	70650
g	95715	91715	93965	91635	90835	90735	80695	90515
h	147451	129950	107700	107250	99100	102350	101850	101750
i	1200	1200	1200	1200	1200	1200	1200	1200
j	17300	17300	15400	13700	13700	13500	13500	20300
k	38800	39300	39850	40450	34450	43100	43100	43900
l	149950	107950	79800	81400	83600	83500	83900	83500
m	68600	69600	66900	81400	91450	100440	83350	78300
mc	65000	60900	60900	59500	56000	46050	53950	42900
n	27350	23550	22350	22350	22350	22350	22350	22350
o	14650	15650	13200	12000	12000	14000	14805	13300
p	55500	52950	41250	41250	48250	44850	44050	39100
q	8700	8700	8700	9500	9500	9500	9500	9500
r	121150	130400	128700	109530	101530	108130	106330	108550
s	108870	119970	122120	109095	106845	110090	119485	115725
t	45900	49700	43100	48300	41100	41300	41300	43100
u	3000	3000	3000	3000	3000	3000	3000	2000
v	4150	5350	4150	4150	4350	4150	4150	4150
w	116075	112075	112975	114150	113750	103400	118850	102250
x								
y								
z	2000	2000	2000	2000	2000	2000	2000	2000

16 **Totals are as follows:**

1890	$1595471
1891	1514070
1892	1382370
1893	1280300
1894	1338450
1895	1364485
1896	1357940
1897	1340640

"C."

City Taxes Paid on Valuation of Ground-rent Lots for Years 1890, '91.

	1890.	1891.	1892.	1893.	1894.	1895.	1896.	1897.	
Thomas Ballantyne:									
66 Crawford ward	$44.55	50 50	44.55	44.55	44.55	44.55	44.55	43.07	$360.87
Henry Blun:									
16 Crawford, east, transferred for 2, 1895									
E. ½ #10, Troup ward									
N. ½ #4, Warren ward	74.50	71.66	66.15	66.15	66.15	45.90	39.15	37.85	467.51
C. M. & J. H. Gilbert:									
3 Forsyth ward, transferred for 1892									
W. ½ #7, Franklin ward									
8, Franklin ward									
12 & 13, Franklin ward, added in 1892	139.75	139.75	147.25	131.63	131.63	131.63	131.63	127.24	1,080.51
Wm. Kehoe:									
S. ½ #23, Columbia ward									
E. pt. #30, " " W. ½ of E. pt.; transferred for '95	41.50	41.50	41.50	36.45	36.45	26.33	26.33	25.45	275.51
Rob't McIntire:									
E. ⅔ #19, Elbert ward; transferred for 4 yr., '96.									
34, Franklin ward " " "									
E. ½ #6, Greene "									
3, Liberty ward									
17, " "									
18, " " W. pt. transferred for 4 qr., '95									
23, " " transferred for 4 qr., '96	300.25	300.25	300.25	269.33	269.33	264.70	194.72	25.45	1,898.83
David Wells:									
E. ½ #61, Brown ward									
#46 & E. ½, Calhoun ward									
37, Lafayette ward									
30, Troup ward	226.00	226.00	226.00	202.50	202.50	202.50	202.50	195.75	1,683.75
D. G. Purse:									
W. ½ #58, Brown ward, transferred for 3 qr., '96	61.00	61.00	61.00	61.00	61.00	61.00	30.00	195.75	
	887.55	890.66	886.70	811.61	811.61	776.61	668.88	429.36	$6,162.98

SAVANNAH, GA., *April 22nd*, 1898.—The above statement is taken from the city records, and I believe it to be correct.

C. S. HARDEE, *City Treasurer.*

239

17 In Chatham Superior Court.

DAVID WELLS ET AL.
vs.
THE MAYOR & ALDERMEN OF THE CITY of Savannah *et al.*
Petition for Relief and Injunction.

On reading and filing the foregoing petition it is ordered that the defendant The Mayor and Aldermen of the City of Savannah do show cause before me on the ninth day of August proximo, or at such other time as said hearing may be ordered, why temporary injunction should not issue as prayed for until the final hearing of said cause, and in the meantime the said Mayor and Aldermen of the City of Savannah and Robert J. Wade, the marshal of said city, are restrained from advertising or selling any of the said property of said plaintiffs levied on for city taxes until the further order of this court.

July 29th, 1890.

R. FALLIGANT,
Judge E. J. C. of Ga.

STATE OF GEORGIA,
Chatham.

To the sheriff of the superior court of Chatham county, Greeting:

DAVID WELLS ET AL.
vs.
THE MAYOR AND ALDERMEN OF THE CITY of Savannah *et al.*
Petition for Relief and Injunction.

The defendants, The Mayor and Aldermen of the City of Savannah and Robert J. Wade, city marshal of said city of Savannah:

You are hereby required, personally or by your attorney, to be and appear at the next superior court of Chatham Co, on the first day of December next, then and there to answer the plaintiff
18 on the merits of the foregoing petition, as in default of such appearance the said court will proceed as to justice shall appertain.

Witness the Honorable Robert Falligant, judge of said superior court, this 29th day of July, in the year of our Lord one thousand eight hundred and ninety.

J. R. SAUSSY,
Plaintiff's Attorneys.

[SEAL.] J. K. P. CARR,
Cl'k S. C. C. C.

Due and legal service of the within petition acknowledged and copy and process *and copy process* waived.

July 29, 1890.

SAM'L B. ADAMS, *Def'ts' Att'y.*

Filed in office July 29, 1890.

JAS. K. P. CARR,
Clerk S. C. C. C.

The Answer of the Defendants and the Exhibit Thereto.

In Chatham Superior Court.

DAVID WELLS ET AL. *vs.* THE MAYOR AND ALDERMEN OF THE City of Savannah and Robert J. Wade, City Marshal.	Petition for Injunction, &c.

The answer of the defendants to the above-mentioned petition.

These defendants admit that petitioners are holders of certain lots of land in the city of Savannah and said county of Chatham, commonly called ground-rent lots, and sometimes called city lots, but as to how or when they became owners defendants are not informed and ask for information as to these matters. Defendants also admit that these lots were originally granted by this defendant, The Mayor and Aldermen of the City of Savannah, and that pe-
19 titioners are either among the original grantees or are assignees holding under transfers, but they do not know when petitioners became the owners.

These defendants also admit that the said lots of land were originally a part of the common or public domain of the city of Savannah, which was from time to time divided into lots and squares, with street intersections, in conformity to and corresponding with the original plan of said city, and were disposed of by the mayor and aldermen of the city of Savannah and the hamlets thereof, but these defendants deny that the sales of such lots as those held by petitioners were authorized by or were made under the act of the General Assembly approved February 10, 1787, which was "An act for the better regulating the town of Savannah and the hamlets thereof," and the 5th section of which gave the power and authority to the then wardens of the city of Savannah (the predecessors of this defendant, The Mayor and Aldermen of the City of Savannah) to let, lease, or rent at public sale any lot or lots of land, including the lot of land, containing sixteen (16) acres, called the Spring, westward of the said town of Savannah, and the building commonly called the Vendue house, and these defendants claim that because of a defect in this authority the act of the General Assembly approved December 21, 1822, was obtained in order to legalize, confirm, and validate these sales. These defendants deny that the original conveyance of these lots were leases, or that the same were let or rented, but, on the contrary, they contend that the said grants of these lots convey freeholds of inheritance to be defeated upon the non-performance of a condition subsequent, and that the estate acquired by a purchaser from this defendant, The Mayor and Aldermen of the City of Savannah, was an estate in fee-simple, absolute, if he should pay down the whole purchase-money, and conditional if he should not.

20 These defendants further say that the first ordinance passed for the purpose of disposing of the said public common was that passed September 28th, 1790, which was entitled "An act for laying off into lots certain parts of the common appurtenant to the city and for disposing of the same;" which said ordinance (except the title and the reservation of 21 of the lots for certain religious, charitable, and educational purposes) is correctly set forth in sections 1019, 1020, 1021, 1022, 1023, 1024, and 1025 of the last code of the city of Savannah, known as McDonnell's Code; that this ordinance did not contemplate any lease or renting of the said lots, but a sale thereof, and it was expressly provided in the said ordinance that the said bargain and sale shall vest either an absolute or conditional estate in the purchaser, according to circumstances—that is to say, an absolute one if the valuation money shall be paid down, or a conditional one if the said valuation money shall not be paid down; this latter also to become absolute if and when the said valuation money shall at any future time be paid into the treasury and an acknowledgement thereof, under the seal of the city, signed by the mayor and the majority of the aldermen for the time being and attested by the city treasurer, shall be endorsed on such deed. These defendants attach hereto as a part of their answer the form of the deed used under the said ordinance and future ordinances in the case of those purchasers who did not pay in full the valuation or purchase money, but elected to retain the valuation money as a portion thereof, as authorized in the ordinances, and to pay for the same the small interest required by the ordinances. These defendants say that this is the form used in the sales made in Jan. 7, 1791, under the first ordinance, and which has been continuously used ever since until the passage of the ordinance of Jan'y 31st,
21 1872, discontinuing sales which permitted purchasers to elect to hold under this plan and requiring all sales to be made absolutely. These defendants say that all the subsequent ordinances, including the last, passed March 9th, 1854, were modeled after the first ordinance of 1790, except that the ordinance of 27th of June, 1803, concerning certain lots in New Franklin ward, provided that the valuation money shall forever be irredeemable; that the one hundred and twenty lots (except the 21 reserved) referred to in the said first ordinance were sold during the early part of 1791, and the petitioners Charles M. and John M. Gilbert now own the western half of lot number seven (7), Franklin ward, and also number eight (8), Franklin ward; the petitioner Henry Blun now owns the northern half of lot number four (4), Warren ward, and the petitioner Robert McIntire now owns lot number thirty-four (34), Franklin ward, the lots in Franklin, Warren, and Washington ward being sold under the said first ordinance passed September 28th, 1790.

These defendants deny that under the execution and delivery of the said deed, a copy of which is hereto annexed as Exhibit "A," that the relation of landlord and tenant thereby became established between this municipal corporation and the holders of said lots, and deny that the absolute title remained in this corporation, and

that the holders obtained a perpetual lease; but, on the contrary, aver that the title conveyed to purchasers was that hereinbefore mentioned and referred to in the said ordinance to be found in MacDonnell's Code and in the other city codes and in the said deeds, a copy of which is hereto annexed as Exhibit "A," in support of their contention. These defendants say that as to the unpaid purchase-money, the purchasers paid what has been called a ground rent, but what was really only a small interest for the use of the said purchase-money; that by reference to said ordinances it will be found that under those passed September
22 28th, 1790; May 30th, 1799; April 20th, 1801; June 27th, 1803; March 22nd, 1819, and June 19th, 1815, which ordinances covered a large number of those sold on the ground-rent plan, only five per cent. (5%) interest was charged and payable on this balance of purchase-money. Under the ordinance of June 19th, 1815, six per cent. (6%) was chargeable as to the lots in Brown and Jackson wards therein mentioned, and this was the rate of interest under the ordinances of February 3rd, 1837; March 14th, 1839; February 11th, 1841, and the later ordinances. These defendants deny that the construction placed on the tenure by which these lots are held by the petitioners is the uniform, continuous, and express construction placed thereon by this defendant corporation from the first disposition of them by public sale to the present time, and while it is true that in some of the published reports made before and since the ordinance of January 31, 1872, these lots, in the statistical reports, have been put down by officials of the city as lots held under lease and lots not taxable, these defendants say that only the idea of such officials was expressed as to the status of the lots; that they were not passing upon this question in any way, and this only indicates that these lots were not, in point of fact, taxed and no revenue came therefrom, except the ground rent or interest aforesaid. This defendant corporation has always exercised the right of ratifying subdivisions of the said lots in making separate titles when it was desired by the holders of any particular lot to surrender the first title and to obtain separate titles, but these separate titles have always been made under the form always used and hereto annexed as Exhibit "A" and under the ordinances thereto appertaining.

These defendants deny that under the authority of this de-
23 fendant corporation any officer of this defendant corporation ever announced to the bidders at the sale of city lots that those disposed of under what is called the ground-rent plan were not subject to city taxation, although it may be true that upon one or more occasions the city marshal did express the current opinion that these lots would not be taxed by reason of the fact that they had not been in many years; but these defendants cannot find any action of council authorizing any statement of this character or ever agreeing that these lots should not be taxed, and they deny that such action has ever been taken by the council of the city of Savannah in any way.

These defendants say that it is true that upon default of the pay-

ment of the interest or the ground rent the right of re-entry has been made under the terms and provisions of the said ordinances and deeds, but they say that the only right possessed by this defendant corporation has been the right to re-enter for the purpose of making sale, and that after paying itself the balance of the original purchase-money *and* surplus that might have been realized really belonged, under the decision of the supreme court of this State in the Lawrence case, reported in 71 Ga., to the original purchaser or his assigns, and that, as held by that court in the decision referred to, "the right reserved by the city was only a pledge or security for a debt that might be due to it."

These defendants deny that the said lots have always been free from municipal taxation, but, on the contrary, say that prior to the ordinance passed November 24th, 1806, if not thereafter, these lots were subject to municipal taxation; that—the minutes of the meeting of the council of this defendant corporation of September 28th, 1790, at which the first ordinance hereinbefore referred to was adopted, it was proposed that a bill be then prepared for
24 laying an assessment (which at that time was the ordinary taxation) upon the inhabitants of the city, and a bill for this purpose was read for the first time at this meeting. Neither the minutes nor the ordinance books (which are incomplete) show what this tax ordinance was, but the first tax ordinance that the books and records of this defendant corporation show is that passed December 17th, 1793, which was an ordinance in part for "the raising of a sum of money annually to defray the expenses of the city of Savannah," and this ordinance assessed, among other things, for "each one hundred (100) pounds value of houses or lots within the city or hamlets six pence," and contains no exemption of any kind, although at that time a large number of lots were held on what was called the ground-rent plan. These defendants say that this ordinance or a similar one remained in force until November 24th, 1806, at which last-mentioned date an ordinance was passed to amend an ordinance entitled "An ordinance to raise a fund for the support of a watch in the city of Savannah," passed the 7th of April, 1806, and which provided, among other things, that "so much of the first section of the aforesaid ordinance as imposed a tax on lots held by lease from the corporation, and so much thereof as imposed a tax on houses, buildings, lots, and wharves owned by persons residing out of the limits of this State be, and the same is hereby, repealed." If by "lots held by lease" were meant lots like thos- of petitioners, then these defendants say that this ordinance of November 24, 1806, which appertained to the support of a watch, was the first which undertook to exempt these lots. The first tax ordinance which refers to ground-rent lots in terms is that passed October 29, 1857, and for many years the tax ordinances of the city of Savannah have not had any exemption as to leased lots or ground-rent lots or any reference thereto. Defendants say, as the records of the city show, that the city has always had rented out, under lease for
25 definite terms, property belonging to the said city. Defendants believe that for many years prior to the early part of

1878 no effort was made to tax these lots, although for many years a good many people in the city had thought that they were taxable and ought to be taxed. On the 29th day of March, 1878, *at* a meeting of the council of the city of Savannah — called for the special purpose of discussing the question as to the taxation of these lots, at which meeting there were present, by invitation, a number of the most prominent members of the Savannah bar in addition to the then corporation attorney. At the meeting of council held April 3, 1878, a resolution offered by Alderman D. G. Purse (one of the petitioners), which provided for the assessment of these lots at their market value for taxation, was passed by council, this action being in accordance with the advice of these attorneys obtained at the meeting of March 29th, 1878. Afterwards, to wit, May 29, 1878, an ordinance was passed, to be found on page 75 of Rebarer's Digest, taxing these lots. Defendants say that no action on this subject has been taken by council since the last-mentioned date until the meeting of October 30, 1889, when a resolution was passed referring to the corporation attorney for his opinion the list of real estate reported to council by the city treasurer as not assessed for taxes, and more especially the lots commonly designated as ground-rent lots, which represented the bulk of the property not taxed, and this resolution called for the opinion of the corporation attorney as to the character of the tenure under which these lots were held and on the question as to whether they were subject to municipal taxation. These defendants are not prepared to say why the action of council taken in 1878, as hereinbefore set out, was not carried out; but the effort to tax aroused the opposition of the holders of these lots. Litigation was threatened and the matter was not pressed, although
26 the action of council in the premises was never in any way rescinded. At the meeting of council held November 19, 1889 (the opinion of the corporation attorney having been previously filed and being to the effect that these lots were subject to municipal taxation), a resolution was passed by council directing the assessment committee of council to instruct the board of assessors of the city to assess these lots for taxation for the year 1890. Subsequently and prior to the adoption of the tax ordinance for the year 1890 these lots were duly assessed for taxation, and according to the assessment these lots were assessed (exclusive of their improvements) at the sum of one million five hundred and fifty-nine thousand four hundred and seventy-one dollars, and defendants say that these lots held as they are were fairly and justly assessed. The entire assessment of real estate in the city of Savannah outside of these lots is eighteen million five hundred and eighty thousand three hundred and thirty-four dollars.

Defendants say that prior to 1878 there has been from time to time agitation and discussion in the public mind on this ground-rent question, although, so far as they are advised, it never assumed any definite shape of late years until 1878. They believe it to be true that in the reports of officials these lots were sometimes called city lots, and sometimes lots held under lease; but they are advised that this is not the legal view of their status.

These defendants are advised that the provision in the said deeds to the effect that they are "subject only to such assessments and burdens as shall be in common with other lot-holders in the said city" are not to be construed as contended for by petitioners, but, on the contrary, they provide for taxation. Defendants say that when this covenant was first employed there were no assessments or burdens upon the lot-holders of the city of Savannah save only the ordi-
27 nary taxation, and that assessments for sidewalks and street improvement were of a much later day. The holders of these lots have paid assessments for sidewalks and other street improvements as the owners of these lots, and neither in the ordinances nor in any procedure under them for the cost of such improvements has any distinction been made between the holders of these lots and of other lots. Defendants say that the city of Savannah has never paid any assessment or burden on these lots, as owner or otherwise, and the suggestion of such a liability in the petition of petitioners is the first intimation they have had of such a claim. Defendants say that petitioners and the other holders of these lots have always paid State and county taxes thereon as the owners.

These defendants say that the last annual report of the mayor of the city of Savannah for the year ending December 31st, 1889, contains, on pages 52, 53, 54, *et seq.*, a statement of all the ground-rent lots not paying taxes at the time of the report and of the owners thereof; that the lots mentioned on pages 80 and 81 as Springfield lots are not held as are the lots mentioned by petitioners, but were disposed of under an ordinance of the city of Savannah approved January 16, 1851, and which provided for their leasing for twenty-four years, and defendants attach hereto as Exhibit "B" the form of lease used for the said Springfield lots. Defendants deny that this defendant corporation has ever made any agreement with the petitioners or their privies exempting the said lots from municipal taxation or that any consideration has ever been paid for such exemption, and as to all these matters they call for strict proof. They also deny that this defendant corporation is estopped from taxing the same. It is true that executions have been issued and levied upon the lots of the petitioners D. G. Purse, Charles M. and John H. Gilbert, Henry Blun, and Robert McIntire for
28 taxes claimed on these lots for the year 1890, and that it is proposed to compel payment of like taxes from all other lots held as these are unless such taxation is held to be unlawful. The cases of the petitioners mentioned having been pressed as test cases and proceedings against other holders of these lots being held, until the determination of these cases, in abeyance, these defendants are only desirous of doing their duty in the premises and of doing justice to all tax-payers.

These defendants, having fully answered, pray that they may be hence dismissed with their costs and charges, and submit that the injunction prayed for should not be granted.

JOHN SCHWARZ, *Mayor.*
SAM'L B. ADAMS,
City Att'y & Att'y for Def'ts.

[SEAL.]
Attest: C. V. HERNANDEZ,
Acting Clerk of Council.

GEORGIA, }
Chatham County. }

You, John Schwarz, mayor of the city of Savannah, do make oath that the foregoing answer is true to the best of your knowledge, information, and belief.

JOHN SCHWARZ, *Mayor.*

Sworn to and subscribed before me this August 8th, 1850.

C. V. HERNANDEZ,
Notary Public, C. C., Ga.

29 EXHIBIT "A."

STATE OF GEORGIA, }
City of Savannah. }

This indenture, made the — day of —— in the year of our Lord one thousand eight hundred and — and in the — year of the Independance of the United States of America, between the mayor and aldermen of the city of Savannah and the hamlets in the State of Georgia, of the one part, and —— —— of the other part.

Whereas under and by virtue of an ordinance for that purpose made and passed by the mayor and aldermen of the city of Savannah, aforesaid on the — day of —— one thousand eight hundred and — and a certain portion of the — commons was laid out into lots, and the said lots, after being duly valued, were exposed to public sale on the terms and conditions mentioned in the said ordinance:

And whereas, the lot hereinafter mentioned, being valued at — was sat up at that sum, and there was bid thereupon as increase money, — at which sums the said —— —— being the highest bidder, became the purchaser of the said lot: and whereas, the said —— —— having paid into the city treasury the sum of — made — election, for the present, of retaining the valuation money in — own hands, and paying a ground rent for the use and occupation of said lot, which ground rent, at and after the rate mentioned in said ordinance, will amount to — per year:

Now, therefore, this indenture witnesseth, that the said mayor and aldermen, for and in consideration of the said sum of — being paid into the city treasury, as by a receipt for the same, endorsed hereon, and signed by the city treasurer, will appear; and
30 also in consideration of the rent to be paid, and of the several covenants and agreements to be performed, have bargained and sold, and by these presents do bargain and sell, unto the said —— —— all that lot of land situate, lying and being in that portion of ground lately in the — common, now called — ward, known by the number and containing sixty feet in length, and — feet in depth, with the rights, members and appurtenances thereof:

To have and to hold the said lot, with all and singular the advantages thereunto belonging, unto the said —— —— executors, administrators and assigns, forever, on this express condition. Nevertheless, that — the said —— —— executors, administrators and

assigns, do and shall yearly and every year during such time as the said valuation money shall remain unpaid, by four equal and quarter-yearly payments, pay or cause to be paid into the city treasury of Savannah aforesaid, the sum of — as ground rent, for the use and occupation of the said lot and premises the first quarterly payment to be made on the — day of —— next ensuing; and in case of failure herein for the space of twenty days after any of the said quarterly payments shall become due, that then the said lot and premises shall revert to the corporation of the said city, who shall immediately thereafter possess the power of re-entry; and having, by means of their proper officers, exercised such power, and given a notice thereof in writing, posted on the premises, the said lot, with all improvements thereon, shall be considered at the expiration of ten days thereafter, as absolutely revested in the corporation, and the estate by these presents created, determined to all intents and purposes as fully as if the same had not been bargained for or purchased; any sale or incumbrance, or other act
31 made or suffered by the said —— —— executors, administrators or assigns, or others under — or them, to the contrary thereof in anywise notwithstanding.

And the said —— —— for — heirs, executors and administrators, and every of them hereby covenant, grant and agree to and with the said mayor and aldermen, and their successors in office for the time being, that the said annual ground rent shall be well and truly paid into the city treasury, by quarterly payments as aforesaid, according to the true intent and meaning of the said ordinance, and of these presents; and that, in case of failure therein, it shall and may be lawful for such re-entry to be made, and for all such other proceedings to be used as in and by the said ordinance, and the condition aforesaid are pointed out and directed; the said —— —— in that case, for — heirs, executors, and administrators, and assigns and every of them, hereby renouncing and releasing all claims whatsoever, both in law and equity, to the said lot with the improvements then thereon being. And it is hereby declared to be the true intent and meaning of these presents, and all parties to the same, that, on payment of the said ground rent, at the times and after the manner hereinbefore directed, the said —— —— heirs, executors, administrators, and assigns, shall and may from time to time, and at all times, hereafter, peaceably and quietly have hold use, occupy, possess and enjoy the said lot and premises, and receive and take the rents, issues and profits thereof, and of every part thereof, to — and — own use, absolutely, without the let, suit, trouble, eviction, or denial of the said corporation or of any person whatsoever acting under them or by virtue of their authority,
32 subject only to such assessments and burthens as shall be in common with other lot-holders in the said city.

And lastly, it is hereby provided and agreed, that it shall, at any future time, be in the power of the said —— —— heirs, executors, administrators, or assigns, if — or they shall so incline, to pay in the said valuation money to the city treasury, with what rent may be due up to that time, in full discharge and extinguishment of the

ground rent; and in that case there shall be an acknowledgment of such payment under the seal of the city signed by the mayor and a majority of the aldermen for the time being, and attested by the city clerk, endorsed on these presents, which shall then and from thenceforth vest an absolute estate, in fee-simple, of and in the said lot and premises, in the said —— —— heirs and assigns to — and their only proper use and behoof forever.

In witness whereof, the parties aforesaid, their hands have hereunto interchangeable set, and have also put these presents under seal in manner directed by the ordinance, the day and year first above written.

—— ——.
—— ——.

Signed, sealed, and delivered in presence of—
—— ——.
—— ——.

CITY TREASURER'S OFFICE,
SAVANNAH, —— —, 186–.

Received from —— —— — dollars, being — per centum on the — purchase-money of the foregoing-named lot.

—— ——,
City Treasurer.

$—.

33 EXHIBIT "B."

STATE OF GEORGIA,
City of Savannah.

This indenture, made this — day of —— in the year of our Lord one thousand eight hundred and — and in the — year of the Independence of the United States of America, between the mayor and aldermen of the city of Savannah and the hamlets thereof, in the State of Georgia, of the one part, and —— —— of the other part:

Whereas, pursuant to and under the provisions of an ordinance of the said mayor and aldermen of the city of Savannah and the hamlets thereof, in council assembled, passed on the — day of —— in the year of our Lord one thousand eight hundred and — entitled "An ordinance for laying off into lots certain parts of the tract of land known as the Springfield plantation, purchased by virtue of an ordinance passed June 10th, 1850, and for disposing of the same," certain of the lots laid off pursuant to said ordinance, after being duly valued, were exposed to public sale, on the terms and conditions mentioned and contained in the said ordinance—and whereas, the lot hereinafter mentioned, being valued at the sum of —, was set up at that sum, and there was bid thereupon as increase money the sum of —, at which sum the said —— —— being the highest bidder, became the purchaser of said lot:

And whereas, the said —— —— having paid into the city treasury the sum of —, being — per centum upon the aggregate of such valuation and increase money, and hath made — election to retain the balance of said purchase-money in — own hands, and pay to the

said the mayor and aldermen of the city of Savannah and the hamlets thereof, interest at the rate of seven per centum per annum by way of ground rent for the use and occupation of said lot for
34 the space of twenty-four years, which interest by way of ground rent at and after the rate mentioned in said ordinance will amount to — annually, with the right and privilege reserved to the said heirs, executors, administrators or assigns at any time within the said twenty-four years, of paying up the said balance of purchase-money, and all interest by way of ground rent as aforesaid, due and to be due, and receiving from the said mayor and aldermen of the city of Savannah and the hamlets thereof, a deed of conveyance in fee-simple of and to said lot of land, with the premises and appurtenances, subject to all reservations and restrictions mentioned and contained in said ordinance:

Now, therefore, this indenture witnesseth, that the said the mayor and aldermen, for and in consideration of the premises, and of the said sum of — being paid into the city treasury, as by a receipt for the same, hereto attached, and signed by the city treasurer, will appear, and of the interest to be paid by way of ground rent as aforesaid, and of the several covenants and agreements to be performed, have demised, let and to farm let, and, by these presents, do demise, let, and to farm let unto the said —— —— heirs, executors, administrators and assigns, all that lot of land situate, lying and being in that portion of ground known lately as the Springfield plantation, as aforesaid, known as the number — with the rights, members and appurtenances thereof, for and during the full end and term of twenty-four years, beginning and to be reckoned from the — day of —— in the year of our Lord eighteen hundred and —.

To have and to hold the said lot, except the reservation — as aforesaid, with all and singular the advantages aforesaid, unto
35 the said —— ——, executors, administrators and assigns, for and during the full end and term of twenty-four years, to be reckoned as aforesaid, upon the following conditions, stipulations and covenants, that is to say: upon condition that the said —— ——, heirs, executors, administrators and assigns, do and shall yearly and every year during such time as the said balance of purchase-money, or any part thereof, shall remain unpaid, by four quarterly payments, pay or cause to be paid into the city treasury of Savannah aforesaid, interest by way of ground rent, at the rate of seven per centum per annum for the use and occupation of the said lot and premises—the first quarterly payment to be made on the — day of —— next ensuing; and in case of failure herein for the space of twenty days after any of the said quarterly payments shall become due, or of failure to pay the balance of principal or purchase-money at the end of said term of twenty-four years, that then the said lot and premises shall revert to the corporation of the said city, who shall immediately thereafter possess the power of re-entry; and having by means of their proper officers, attorneys or agents, exercised such power, and given a notice thereof in writing posted on the premises, the said lot, with all improvements thereon, shall be considered, at the expiration of ten days thereafter, as absolutely

revested in the said corporation, and the estate or lease by these presents vested, determined to all intents and purposes as fully as if the same had not been bargained for, leased or demised, any sale or incumbrance or other act made or suffered by the said —— ——, heirs, executors, administrators or assigns, or others under him or them to the contrary in anywise notwithstanding. And the said —— —— do- for —, heirs, executors, administrators and assigns, and every of them, hereby covenant, grant and agree, to
36 and with the mayor and aldermen for the time being, and their successors in office, that said annual interest by way of ground rent shall be well and truly paid into the city treasury by quarterly payments as aforesaid according to the true intent and meaning of the said ordinance, and of these presents; and that in case of failure therein, or of failure to pay the balance of purchase-money at the end of said term of twenty-four years, as aforesaid, it shall and may be lawful for such re-entry to be made, and for all such other proceedings to be used, as in and by said ordinance, and the ordinance passed on the twentieth day of April, in the year eighteen hundred and one, so far as the same is applicable, therein referred to, and the condition aforesaid are pointed out and directed; the said —— ——, heirs, executors, administrators and assigns, and every one of them, hereby renouncing and releasing all claim whatsoever, both in law and equity, to the said lot and term and lease aforesaid, with the improvements then on said lot being.

And it is hereby declared to be the true intent and meaning of these presents, and of all parties to the same, that, on payment of the said interest by way of ground rent, at the time and after the manner hereinbefore directed the said —— ——, heirs, executors, administrators and assigns, shall and may, from time to time, and at all times, during the continuance of this lease, peaceably and quietly have, hold, use, occupy, possess and enjoy the said lot and premises, and receive and take the rents, issues and profits thereof to — and — own use, without the let, suit, trouble, eviction or denial of the said corporation, or of any person or persons whatsoever acting under them, or by virtue of their authority.

And it is hereby provided and agreed that it shall, at any
37 future time, within the said twenty-four years, be in the power of and optional with the said —— —— heirs, executors, administrators or assigns, if — or they shall be so inclined, to pay any part of the balance of said purchase-money, with what interest by way of ground rent may be due up to that time, into the city treasury, and stop the said interest by way of ground rent, on said amount so paid in; and also that it shall, at any future time within the said twenty-four years, be in the power of the said —— —— heirs, executors, administrators or assigns, if — or they shall be so inclined, to pay in the entire balance of such purchase-money to the city treasurer, with what interest by way of ground rent may be due up to that time, in full discharge and extinguishment of such balance of purchase-money and interest by way of ground rent; and in the latter case there shall be an acknowledgment of such payment under the seal of the city, signed by the

mayor and a majority of the aldermen for the time being, and attested by the city clerk, endorsed on these presents, which shall then and thenceforth vest an absolute estate, in fee simple, of and to the said lot and premises in the said —— —— heirs and assigns, to — and their only proper use and behoof forever.

In witness whereof, the parties aforesaid, their hands have hereunto interchangeable set, and have also put these presents under seal, the day and year first above written.

—— ——.
—— ——.

Signed, sealed, and delivered in the presence of—
—— ——.
—— ——.

CITY TREASURER'S OFFICE,
SAVANNAH, —— —, 185-.

38 Received from —— —— — dollars, being — per centum on the purchase-money of the foregoing-named lot.

—— ——,
$—. *City Treasurer.*

Filed in office Aug. 9, 1890.

JAMES K. P. CARR,
Cl'k S. C. C. C.

Judgment of the Court Granting the Nonsuit and Dismissing said Cause.

In Chatham Superior Court.

DAVID WELLS ET AL.
vs.
MAYOR AND ALDERMEN OF THE CITY OF Savannah *et al.* } Injunction and Relief.

In the above-stated cause, upon the completion of the evidence submitted by plaintiffs, the defendants made a motion to dismiss the case in the nature of a motion for a nonsuit.

Whereupon it is considered and ordered that the said motion be, and the same is hereby, sustained, and that the said case be, and the same is hereby, dismissed at the costs of plaintiffs.

R. FALLIGANT, *Judge.*

In open court, this 27th day of April, 1898.

Filed in office Ap'l 27, 1898.

JAMES K. P. CARR,
Clerk S. C. C. C.

39 GEORGIA, }
Chatham County. }

CLERK'S OFFICE, SUPERIOR COURT.

I, James K. P. Carr, clerk of said court, do hereby certify the above and foregoing 37 pages in typewriting to be a true and com-

plete copy of such parts of the record as are specified in the bill of exceptions necessary to be transmitted to the supreme court of Georgia in the case of David Wells *et al. versus* The Mayor and Aldermen of the City of Savannah, which case was heard and determined upon a motion to dimiss at the March term, 1898, of Chatham superior court—that is to say, on the 27th day of April, 1898.

In testimony whereof I have hereunto set my official signature and affixed the seal of said court this 29th day of April, 1898.

JAMES K. P. CARR,
Clerk S. C. C. C. Ga.

[SEAL.]

Filed in office July 1, 1898.

LOGAN BLECKLEY,
D. C. S. C. Ga.

40 CLERK'S OFFICE, SUPREME COURT OF GEORGIA,
ATLANTA, *March* 5, 1900.

I hereby certify that the foregoing pages hereto attached contain a true copy of the transcript of record in the case therein stated, as appears from said transcript now on file in this office.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON,
Clerk of the Supreme Court of Georgia.

41 No. 7, Eastern.

In the Supreme Court of Georgia, October Term, 1898.

DAVID WELLS ET AL., Plaintiffs in Error,
versus
THE MAYOR AND ALDERMEN OF THE City of Savannah *et al.*, Defendants in Error.
} Equity. From Chatham Superior Court.

Original.

Bill of Exceptions.

Saussy & Saussy, attorneys for plaintiffs in error. P. O. address, Savannah, Ga.

Filed in office June 9th, 1898.

JAMES K. P. CARR,
Clerk S. C. C. C.

Filed in office June 15, 1898.

LOGAN BLECKLEY,
D. C., S. C. Ga.

Due and legal service of the within bill of exceptions acknowledged and copies received.
Savannah, June 8, 1898.

SAM'L B. ADAMS,
(*Savannah, Ga.,*) *Att'y for Def'ts in Error.*

42 STATE OF GEORGIA, }
Chatham County. }

Be it remembered that on the 27th day of April A. D. 1898, during the March term, 1898, of the superior court of Chatham county, there came on to be heard before the judge of said court, and a jury regularly empanelled and sworn, a cause in which David Wells, Thomas Ballantyne, Charles M. Gilbert and John H. Gilbert, William Kehoe, Harry Blun, Daniel G. Purse, Robert McIntyre, Mary E. Douglass and Dennis O'Connell were plaintiffs, against The Mayor and Aldermen of the City of Savannah, a municipal corporation of said State, and Robert J. Wade, city marshal, the said cause being a petition in equity for injunction and relief.

The said cause was heard upon the petition and exhibits and amendments thereto of the plaintiffs, the answer and exhibits of the defendants and upon the evidence submitted, a brief of the said written and oral evidence, as is material to a clear understanding of the errors complained of is herein incorporated and set forth as follows:

The minutes of council of the city of May 18, 1790, showing that the yearly expenses of the city government were estimated to be twelve hundred and fifty pounds, towards defraying which the committee find that the funds of the city will produce the sum of £542.

There being a deficiency of £708, as appears from the above statement of expenditures, and ways and means for defraying the same, your committee, fully impressed with the necessity of carrying into effect the (aforesaid) improvements as early as possible, and with a view of relieving the inhabitants from burthensome assessments, as they find the common- appurtenant to the city are invested in the lot-holders by law, recommend that the said lot-holders meet at the court-house on Monday next at 9 o'clock in the morning to determine on the expediency of laying off and disposing of part of said commons for defraying the necessary expenses of the current year, as well as establishing a fund for that purpose in the future.

Resolved, That it is the sense of this council that the said lot-holders be informed at their meeting that the mayor and aldermen wish to be empowered to lay off all that part of the common on the east and west sides of the city which lies toward the bay, drawing a line from the west of the trustees' gardens directly along
43 the north line of Broughton street to the east of Yamacraw, and to lay out lots on the ground so taken in on the east and west sides of the city agreeably to the old plan of Savannah as nearly as the same can be conveniently done. That a draft or plan be made to recommend to the lot-holders to empower them to dispose of, with an instrument in writing, to be signed by as many as

approve of the measure to be laid before the meeting on Monday next.

There not being a sufficient number present to proceed to business, the members present only laid before the meeting of lot-holders convened together pursuant to the notification, the report of their committee on ways and means, and then adjourned.

Min. June 1.

Resolved, That the marshal immediately summon all the lot-holders of the city and its hamlets to a meeting at the court-house at 5 o'clock this afternoon on the business postponed from yesterday.

The minutes of council of July 6, 1790, — contains a petition and remonstrance from a number of persons, in all seventy, praying that a further convention of lot-holders in this city may be called on the subject of laying out a part of the common, was presented to council and read, and there being also before council another prayer signed by a greater number of lot-holders, to wit: in all ninety-two, expressing their full approbation of the measure of laying out said common:

Resolved, That council will, on Tuesday next, consider the merits of the said two papers, respectively, in order that they may determine by which they will be governed, and appointed a committee to examine the names annexed to each of the said two papers and report any of the names not entitled to a voice in this case, if any such there be.

The committee appointed to bring in a bill for laying off part of the east and west common, reported a draft of such bill, which was read the first time.

The minutes of July 13, 1790, contains a report of the committee appointed to examine the names annexed to the two papers above referred to, which shows that on one petition four were not entitled to a voice, and on the petition calling for another convention ten were not entitled to a voice. It was ordered that a report of the committee be furnished the first subscribers in each petition.

Council then proceeded to the order of the day for determining by which of said two petitions they will be guided, and the merits of each being fully discussed and considered, do resolve,

44 1st. That from the return of the lots in the city and hamlets made to the tax collector for the last year, it appears that there are about 200 persons entitled to vote in the present instance, and that as a number of those present live out of the city, and some of them even out of the State, it cannot reasonably be expected that the whole number will appear pro and con to any measure whatever.

2d. That the two lists added together amount to 154 good votes, besides six members of council, which are a respectable number out of 200.

3d. That out of the above number of lot-holders there are ninety-four for absolutely laying out a part of the commons into lots, and sixty-six subscribers to the other paper, and these latter do not pos

itively say that they are against the measure, but only desire that another meeting should be called for deliberation thereon.

4th. That under such circumstances the council think they are well warranted, and therefore determine to be guided by the paper in favor of laying out the said lots, and will accordingly proceed in said business.

The minutes of September 28, 1790, in which it was stated that "the bill for laying out and surveying part of the commons into lots was read a third time, and that it was resolved that the same be passed into an ordinance under the title of an ordinance for laying off into lots certain parts of the commons appurtenant to the city, and for disposing of the same, and that the mayor do sign the same."

Ordinance of September 28th, 1790.

An ordinance for laying off into lots certain parts of the common appurtenant to the city, and for disposing of the same.

Whereas, public utility requires that certain parts of the common be laid out and disposed of:

SECTION 1. Be it ordained by the mayor and aldermen of the city of Savannah and the hamlets thereof, in council assembled, and it is hereby ordained by the authority of the same, That all that part of the east and all that part of the west common, situate, and lying between Bay and Broughton streets, extending eastwardly to a public — of one hundred feet in width, and westwardly to a public street of the same width, be, on or before the first day of November next, ensuing, laid off into one hundred and twenty lots; that is to say, eighty lots on the east and forty lots on the west common, each lot to contain sixty feet in width and ninety feet in depth, with certain squares, streets and lanes, in and between the same, agreeably to the plan marked No. 1 (one), hereunto annexed, and being so laid off, the said lots, or as many of them as can be, shall be sold and disposed of on the terms and conditions hereinafter mentioned; that is to say, the said lots shall be valued according to the estimate or schedule marked No. 2 (two), hereunto annexed from one hundred and sixty pounds to forty pounds lawful sterling money, inclusive, and the ground rent of the same shall be in proportion, and after the rate of five pounds per annum on every hundred pounds value, and it shall be in the option of the purchaser either to pay down the said valuation money, or else hold his or her purchase on ground rent, payable quarterly, as hereinafter mentioned.

SEC. 2. And be it further ordained, That said lots shall be put up at public auction in arithmetical progression, beginning at number one (1), in each ward, and so proceeding upwards until they shall be all disposed of (except as hereinafter excepted, or until so many of them shall be disposed of as there appear bidders for; and the said lots shall be respectively set up at the valuation contained in the said schedule annexed), and whatever sum or sums shall be bid upon the said valuation at the same time of the sale of the said

lots shall be considered as increase money and shall be paid down in cash, and the person bidding most of such increase money shall be deemed the purchaser of the lot then under sale; and in regard to the said valuation money, it shall be in the option of the purchasers either to pay the same down in cash, or else to retain the same in their hands and the hands of their heirs and assigns forever, on a ground rent, which ground rent shall be at and after the rate of five pounds, by the year, for every hundred pounds value of the purchase, and so in proportion for any greater or lesser sums, payable in four equal quarterly payments into the city treasury; but it shall, nevertheless, at any time hereafter, be in the power of such purchasers, or their heirs and assigns, to pay in the said valuation money, with what rent may be due up to that time, in full discharge and extinguishment of the said ground rent.

SEC. 3. And be it further ordained, That a deed, by way of bargain and sale, shall be made to all and every purchaser or purchasers of the said lots, under the seal of the city, signed by the mayor and a majority of the aldermen for the time being, and attested by the clerk, who shall enter a docket or abstract of such conveyance in a book to be provided and kept for that purpose, and a note or memorandum of such docket or abstract, shall be marked on the said deed. And the said bargain and sale shall vest either
46 an absolute or conditional estate in the purchaser according to circumstances, that is to say, an absolute one, if the valuation money shall be paid down, or a conditional one, if the said valuation money shall not be paid down, this latter also to become absolute if and when the said valuation money shall at any future time be paid into the treasury, and an acknowledgment thereof under the seal of the city, signed by the mayor and a majority of the aldermen for the time being, and attested by the city treasurer, shall be endorsed on such deed. And the said conditional estates shall amount to this, that the use and occupation of the premises are forever secured to the purchaser and others claiming under him or her on payment of the ground rent, but on failure therein for the space of fifteen days after the same shall become due, the said premises are to revert to the corporation, who shall immediately thereafter possess the power of re-entry, and having by means of their proper officers exercised such power and given a notice thereof in writing posted on the premises, the lot or lots so entered upon with all improvements thereon, are to be considered at the expiration of ten days thereafter as absolutely revested in the corporation, and the conditional estate therein determined, to all intents and purposes as fully as if the same had not been bargained for, or purchased, any sale or incumbrance or other act, made of suffered by the purchaser or purchasers or others under him, her or them to the contrary thereof, in anywise notwithstanding.

Sec. 4 provided for the giving of a bond of those taking conditional estates at the time of receiving the deed of bargain and sale to the mayor and aldermen of the city of Savannah with good security in the penal sum of four times the annual ground rent of the

purchase conditioned for the payment of such rent quarterly during the continuance of said conditional estate without fraud or further delay; and also that in case of re-entry made by the corporation or its officers such purchaser shall and will forfeit and pay on the determination of said conditional estate at the rate of ten per cent. on the valuation money of his purchase, if there shall be no building erected thereon to the value of at least twenty pounds sterling; but if there shall be any such building erected thereon to that value, then the same shall excuse the party from said forfeiture of ten per cent. And in all cases the building shall be appraised and valued by two or three citizens appointed by and sworn before the city council.

47 Sec. 5 provides for the resale of re-entered lots within five years from the first sale to be sold out again on the same terms and conditions as the said lots are now directed to be sold and let out upon a reasonable addition being made to the respective valuation for any buildings or improvements that may be made on the said lots, respectively.

Sec. 6 provides for donation of certain lots for church and charitable purposes.

Sec. 7 provides for giving three months' notice of intended original sale, and provides for commissioners to conduct the same.

Sec. 8 provides for having the lots surveyed by the county surveyor or other surveyor under the direction of the commissioners.

Notice of Sale of Lots.

(Georgia Gazette, June 13, 1799.)

The subscribers appointed commissioners to superintend the sale of the lots laid out on the east and west common, in pursuance of an ordinance of the city council, hereby give notice that the sale will commence precisely at 10 o'clock on Monday, June 17th inst., at the court-house, beginning with the lots on the west end of the city, in numerical order, (except those reserved).

The terms specified by ordinance are as follows: The lots will be set up at the valuation fixed by council, and whatever sum is bid above such valuation will be required in cash, and the person being the highest bidder shall be deemed the purchaser; purchasers are at liberty to take a lease to him or her or his or her heirs and assigns forever of the lots so purchased at a ground rent of five per cent. on the valuation, payable quarterly to the city treasurer, or to extinguish the leasehold title by paying at any time to the city treasurer the original valuation money and all arrears of rent of the lot and take a title in fee-simple to the premises. On failure to pay the ground rent quarterly, the city to have a right to re-enter on twenty days' notice to the person in possession, and in case of non-payment then the lot and improvements to revert to the corporation.

Purchasers taking a leasehold estate will be required to give security approved by council in four times the annual ground rent of the purchase for the due payment of the ground rent quarterly, and in case of re-entry such purchaser to forfeit ten per cent. on the

valuation money unless there are buildings erected on the lot to the value of one hundred dollars, at least, which will excuse the forfeiture.

Other particulars will be declared at the day of sale. By
48 applying to the city clerk the valuation of each lot may be known and the plan seen.

JOSEPH CLAY,
THOS. YOUNG,
W. STEPHENS,
JOHN P. WARD,
GEO. JONES,
Commissioners.

An act to confirm certain conveyance of the town common of Savannah made by the mayor and aldermen.

The mayor and aldermen of the city of Savannah having been prohibited, by an act passed on the first of December, 1760, from alienating or granting away for any purpose whatsoever, than by an act of the General Assembly, the common appertaining to said town, and it being represented to the legislature that the said mayor and aldermen to the great advantage of the lot-holders, and with much profit to the treasury of said city have at different times heretofore alienated, granted and conveyed certain parts or lots of said common, and justice requiring that the agreements made by the corporation with the purchasers be confirmed:

Be it enacted, etc., That all and singular the conveyances heretofore made of the said town common under the authority of the mayor and aldermen, whether in fee-simple or otherwise, shall be and they are hereby declared to be legalized, confirmed and made valid to all intents and purposes, according to the covenant, limitations and agreements of the same.

Assented to December 21, 1823.

An act to amend and consolidate the several acts which have been passed in relation to the powers and privileges of the corporation of the city of Savannah, etc.

Sec. 8. Be it further enacted, etc., That the said mayor and aldermen, or a majority of them, shall have power to purchase any real or personal estate for the use and benefit of the corporation, and sell and dispose of all or any part of the property, domain, land or lots, or any personal property to the said corporation belonging or appertaining, by lease, for years or fee-simple, as to the said mayor and aldermen, or a majority of them shall — meet and proper.

Assented to December 24, 1825.

Minutes of March 28th, 1850.

It is admitted that all subsequent ordinances for the sale
49 of lots laid out from the South common conform to this ordinance, the ground rent being increased in some ordi-

nances to six per cent. and in others to seven per cent. of the valuation, and the giving of a bond for the payment of the ground rent was dispensed with, and with the further exception that certain lots in Franklin ward were disposed of at certain ground rent, which were irredeemable.

Resolution to buy the whole of the Springfield Plantation tract of land, nine hundred and sixty (960) acres, at $29 an acre, adopted; p. 28.

The ordinance laying off into lots Springfield plantation, and providing for the sale of same, as contained in Henry's Ordinances of Savannah, page- 123, 124, and 125.

Section 1 provides for the laying off of the lots.

Sec. 2 provides that all lots so laid off shall be set up for sale at public outcry by the marshal of the city at the valuation named by the committee appointed by council on the 5th day of December, 1850, under the superintendence of the committee on public sales and city lots, and whatever amount shall, at the sale, be bid on the valuation of a lot, 20 per cent. upon the aggregate of said increase, and the valuation shall be paid into the city treasury in cash, and the highest bidder shall be the purchaser of the lot then sold. In regard to the residue of said valuation and increase money, it shall be optional with the purchaser to pay the same in cash, or else to retain the same or any portion thereof unpaid in his hands twenty-four years from the day of sale, receiving in the latter case, a deed from the mayor and aldermen of the city of Savannah and hamlets thereof, signed and sealed by the purchaser also on condition of the quarterly payment of an annual interest to this corporation, equal to the interest on the amount of said residue, at the rate of seven per cent., and on such further conditions and limitations as are herein set forth and referred to, and with such covenants as are necessary to secure the purchase-money and interest to be expressed in the deed; but it shall nevertheless, at any time hereafter be in the power of the purchaser, his heirs, executors, administrators and assigns to pay to the city treasury the said residue and interest.

Sec. 3 provides for reservation of a ditch ten feet in width to answer as a common drain for all of said lots.

Sec. 4 provides that the third section of the ordinance passed on April 20, 1801, entitled An ordinance for laying off into lots
50 a ward on the southwest of the common appurtenant to the city, and disposing of the same, and more effectually to ascertain the description of the lots in Oglethorpe ward, shall be of force as part and parcel of this ordinance, and apply in the same manner as therein contained to the lots herein directed to be laid off and disposed of, so far as the same is not repugnant to anything herein contained, and so far as same can be made to apply to the location of these lots beyond the limits of the city, and the time of payment fixed upon.

Sec. 5 provides that the sales of a portion of the lots already made at public outcry on January 9, 1851, are confirmed and made

valid and that deeds be executed for said lots upon the terms and conditions herein expressed.

Section 3 of the ordinance of April 20, 1801, above referred to is in words following, to wit:

"SEC. 3. That a deed by way of bargain and sale shall be made to all and every purchaser or purchasers of said lots under the seal of the city, signed by the mayor and a majority of the aldermen for the time being, and attested by the clerk, who shall enter a docket or abstract of such conveyance in a book to be provided and kept for that purpose, and a note or memorandum of such docket shall be marked on said deed, and said bargain and sale shall vest either an absolute or conditional estate in the purchaser according with circumstances; that is to say, an absolute one if the valuation and increase money shall be paid down, or an conditional one, if the valuation and increase money shall not be paid down, the latter also to become absolute, if, and when the said valuation and increase money shall at any future time be paid into the treasury, and an acknowledgement thereof, under the seal of the city, signed by the mayor and a majority of the aldermen for the time being, and attested by the city treasurer, shall be endorsed on such deed; and the said conditional estate shall amount to this: that the use and occupation of the premises are forever secured to the purchaser, and others claiming under him or them on the payment of the ground rent, but on the failure herein for the space of twenty days after the same shall have become due, the said premises are to revert to the corporation, who shall immediately thereafter possess the power of re-entry, and having, by means of their proper officer exercised such power, and given a notice thereof in writing posted on the premises, the lot or lots so entered upon, with all improvements thereon, are
to be considered at the expiration of ten days thereafter, as
51 absolutely revested in the corporation, and the said conditional estate therein determined to all intents and purposes, as fully as if the same had not been bargained for or purchased, any sale or incumbrance, or other act made or suffered by the purchaser or purchasers or others under him or them to the contrary thereof in anywise notwithstanding."

It is admitted that the copy deeds exhibited to the answer are the forms of the deeds executed by the corporation to the purchasers of lots laid out from the town common and Springfield plantation respectively, who elected to hold the lots on a ground rent.

A committee of three aldermen and three citizens were appointed to appraise the lots on the Augusta road, part of the Springfield plantation: Screven, Purse and Saussy; Stone, Roberts and La Roche.

Committee reported appraisement as follows:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 14, 16 and 18, $500; 11 and 13, $400; 15 and 17, $600; 12, $350.

Resolved, That lots on Augusta road which have been appraised, be offered for sale under the superintendence of the committee on

public sales and city lots on the same terms that the city lots are usually sold.

Ordinance of February 27th, 1851. Henry's Ordinances, p. 126.

An ordinance to authorize any person to make a half lot fee-simple, and also to permit joint lessees of a lot to divide the same into two parts, and to receive titles for the same.

SECTION 1. Be it ordained, etc., That any person holding a lot in the city of Savannah as joint tenant, or tenant in common with another under the ordinary city deed, may pay one-half of the balance of purchase-money due on the same, and upon such payment shall receive a deed in fee for one-half of said lot, which shall be designated as the eastern, western, northern, or southern half, as the case may be.

SEC. 2. That any lessee of a city lot may, on application to council, divide said lot into two parts and receive separate leases for the same, and in all cases referred to in this ordinance the parties shall severally pay for the deeds issued.

Ordinance of July 31, 1851. Henry's Ordinances, 129 *et seq.*, providing for increasing the depth of lots on Gaston street.

Whereas, the purchasers of lots heretofore sold on Gaston street, have applied to council to add twenty feet to the front of
52 each of said lots, making the depth of the same one hundred and twenty feet, upon condition that twenty per cent. be added to the appraised value of each of the said lots, upon which additional value of each lot-holder shall pay at the rate of six per cent. per annum in quarterly payments. Therefore,

SECTION 1. Be it ordained, etc., That from and after the passage of this ordinance, the width of Gaston street be reduced to seventy-five feet, and the depth of the lots fronting south on Gaston street be increased to one hundred and twenty feet.

SEC. 2. That the depth of the lots heretofore sold on Gaston street, extending from Drayton street to Tattnall street, be added twenty feet in front and conveyance be made to each lot-holder upon condition that said lot-holder pay at the rate of six per cent. per annum in quarterly payments on a sum equal to twenty per cent. of the appraised value of such lot, said quarterly payment to be due and payable at the same time that the regular ground rents on said lots fall due.

SEC. 3. That an endorsement on the conveyance heretofore made of any of said lots, signed by the mayor or acting mayor, shall be a sufficient conveyance to said additional twenty feet of each lot if in substance as follows: Whereas, under and by virtue of an ordinance passed July 31, 1851, upon the application of lot-holders on Gaston street, twenty feet was added to the front of each of said lots, between Drayton and Tattnall streets, upon condition that twenty per cent. be added to the appraised value of each of said lots, and each lot holder pay at the rate of six per cent. per annum, in

quarter-yearly payments on said additional value of twenty per cent., said quarter-yearly payments to be due and payable at the same time that the regular ground rents on said lots fall due. Now, know all men by these presents, that the mayor and aldermen of the city of Savannah and the hamlets thereof, for and in consideration of the premises and of the quarter-yearly payment to be made by the within named —— ——, owner of lot No. —, on Gaston street, have bargained and sold and by these presents do bargain and sell unto the said —— ——, heirs and assigns, that lot of land sixty feet in front and twenty feet in depth, immediately in front of said lot No. —, on Gaston street, to have and to hold said addition of twenty feet by sixty feet unto the said —— ——, heirs, administrators and assigns forever, as part of the original lot, upon the express condition, nevertheless, that the said —— ——, heirs, executors, administrators and assigns, shall every year, by four equal
53 quarter-yearly payments, pay or cause to be paid into the city treasury of Savannah the additional sum of as — ground rent for the use and occupation of the same, at the same time and on the same terms as in the original lease of the original lot; and in case of failure to pay the whole ground rent on said lot so added to for the space of twenty days after it is due, then said lot shall revert to the corporation, who shall proceed to re-enter in the manner pointed out in the conveyance of said lot No. —.

In witness whereof, etc.

Deed for Subdivision of a City Lot under Ordinance of February 27, 1851.

No. —.

STATE OF GEORGIA,
City of Savannah.

This indenture, made this first day of March, in the year of our Lord one thousand eight hundred and sixty between the mayor and alderman of the city of Savannah and hamlets thereof of the one part, and Moses J. Solomon of the other part. Whereas, under and by virtue of an ordinance for that purpose made and passed in the city council of Savannah on the 13th day of March, one thousand eight hundred and fifty-one, a certain portion of the South common was laid out into lots, and the said lots after being duly valued, were exposed to sale on the terms and conditions mentioned and contained in said ordinance. And whereas, lot No. 15, Chatham ward, being one of the lots thus valued, was sold on the 23rd day of April, one thousand eight hundred and fifty, unto Joseph Felt; and, whereas, on the twenty-seventh day of February, eighteen hundred and fifty-one, an ordinance was passed setting forth that any lessee of a city lot may, on application to council, divide said lot into two parts and have separate leases for the same; and, Whereas, on the 16th day of February, eighteen hundred and sixty, the mayor and aldermen of the city of Savannah and hamlets thereof, granted the application of Joseph M. Solomons praying

council to grant a separate lease for the eastern half of said lot to Moses J. Solomons, and also praying a separate lease for the western half of said lot No. 15, Chatham ward, unto A. A. Solomons, trustee for Mrs. Z. M. Solomons.

Now, this indenture witnesseth, that the mayor and aldermen for and in consideration of the premises, and in consideration of the rent to be paid, and of the several covenants and agreements to be
54 performed and for the further considerations of the sum of five dollars, well and truly paid, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do bargain and sell unto Moses J. Solomons the eastern half or moiety of said lot, with the rights, members and appurtenances thereof; to have and hold the same unto the said Moses J. Solomons forever upon the terms, covenants and conditions mentioned and expressed in the original lease of said lot unto Joseph Felt, and of record in clerk of council's office, in Record of Titles, vol. 1, p. 218, except that the annual ground rent shall be nineteen and two-hundredth-dollars; the first quarterly payment to be on the 23d day of April, 1860, which said lease unto Joseph Felt is to be taken, held and considered as part and parcel of this lease and applying in the same manner as therein contained, so far as the same is not repugnant to anything therein contained.

In witness whereof, the mayor and aldermen of the city of Savannah and hamlets thereof have hereunto set their hands and caused the corporate seal of the city to be affixed this first day of March, eighteen hundred and sixty.

Signed, sealed and delivered in presence of—
(Signed by mayor and seven aldermen.)

[SEAL.]
Attest: R. W. COPE,
Clerk of Council.

E. MENDEL,
Notary Public.

Form of Original Transfers of Ground Rent or City Lots Entered on the Books of Registry of said Lots in the City Treasury.

Lot No. 25, Berrien ward.

STATE OF GEORGIA, }
City of Savannah. }

For value received I hereby transfer, assign and set over to John Scudder all my right, title, claim or demand which I may have in law or in equity unto the above lot of land known as lot No. 25, Berrien ward.

A. A. SMITH. [L. S.]

Attest: EDWARD H. WILSON, *J. P., N. P.*
JAMES S. WILKINS.

55 No. 1, Chatham ward.

SAVANNAH, GA., *April* 28, 1856.

For value received I hereby transfer and set over unto Mrs. Ann B. Bates all the right, title, interest, claim or demand in law or in equity which I may have to lot No. 1, Chatham ward.

B. CONSTANTINE.

In presence of—
EDWARD G. WILSON,
J. P., N. P. No. 6, Forsyth Ward.

Form of Original Transfers of Lots in Springfield Plantation, Entered on the Book of Registry of said Lots in the City Treasurer's Office.

Lot No. 7.

STATE OF GEORGIA, }
Chatham County. }

For value received I hereby transfer and set over unto Daniel A. Stewart of the city of Savannah, all the right, title and interest, claim and demand whatsoever I may have in law or equity in or to the above lot of land.

Witness my hand and seal this 3d day of March, 1857.

JOHN SCUDDER, *Extr.* [L. S.]

Witness:
SAM'L R. PALMER.
JAMES S. WILKINS.

Lots 29 and 30, Springfield plantation.

STATE OF GEORGIA, }
Chatham County. }

SAVANNAH, *April* —, 1854.

For value received we hereby transfer and set over unto John D. Delannoy of the city of Savannah, all our interest, right, title, claim and demand in law or in equity which we may have in or to the above lots of land.

GEO. W. WYLLY.
JOHN S. MONTMOLLIN.

Signed in presence of—
JOSEPH W. ROBERTS,
EDWARD G. WILSON,
J. P. & N. P.

Resolved, That the city marshal advertise for sale on Mon-
56 day, 18 April, inst., at 10 o'clock a. m., the city lots in Jasper, Pulaski and Lafayette wards, lying on and south of Harris street, stating conditions of sale, mode of payment, etc., in conformity to ordinance and a resolution passed at former meeting of council.

Min. 7 April, 1842.

Report of majority of finance committee on application of Mrs. Ann White to have increase money paid by her husband on lot 23, Columbia ward, refunded to her, amounting to $255.

As far as the committee have been able to ascertain, all the statements set forth in the petition are true, yet they cannot perceive how they should constitute a claim upon the treasury either in law or equity. It is presumed all the forms of law were complied with by the marshal in the re-entry and sale and it may also be presumed that though the purchase was an unfortunate one for Col. White, the city has also been a loser by the sale to him, suppose for instance that instead of Col. White's bid, the bid of the person before him had been accepted, it is probable the lot instead of laying vacant, would have been long since improved, in which case the city would not only have received its ground rent, but taxes on the improvements, with these views * * * the committee recommend that it be rejected.

Min. 11 August, 1842.

Report of Real Property Belonging to the City.

Real property paying 5 per cent. rent—

On valuation	$69,635 00
Lots paying 5 per cent	137,077 00
Buildings	45,500 00
Unproductive property	278,500 00
Investment railroad stocks	513,300 00
	$1,064,012

Min. Dec. 1, 1842.

On March 3, 1791, it was ordered that notification be posted under the vendue and market houses, informing the purchasers of lots who have paid their increased money that council will meet on Saturday afternoon at 4 o'clock to deliver their titles and receive their obligations with security as required by ordinance.

The following titles were duly executed in council, the parties having given bond with approved security, according to the ordinance:

57 To John Shick for lots 28, 29, Franklin ward.
To Chist Gugel, lot 4, Washington ward.
To Gabriel Seavers, lot 34, Franklin ward.
To John Haupt, lot 14, Franklin ward.
To Joseph Clay, Jr., lot 11, Franklin ward.
To Joseph Habersham, lot 9, Franklin ward.
Min. June 21, 1791.

That notice be given in two places in the city, and in the Gazette that council will sell on July 1st, next, at public auction, on the premises, for seven years, to the highest bidder, the lease of the filiature on the foregoing terms:

That further notice be given in the Gazette that council will sit

at the court-house on Friday, 24, and on Friday, 1st of July, next, for the express purpose of executing titles to the purchasers of lots lying in the east and west common, and unless they avail themselves of such notice they will be proceeded against agreeably to the ordinance in that case made and provided.

Council executed titles to the following persons, they having given bond and approved security, as required by law:

Anne Cuthbert	Lot	30	Franklin.
Benj. Oakman	"	25	"
Benj. Oakman	"	32	"
Abial Brown	"	21	"
John Welcher	"	2	Washington.
Thos. Gibbons	"	8	Franklin.
Donald McLeod	"	22	Warren.
Emil De Lamotter	"	22	Franklin.
John Robert	"	13	Washington.
John Robert	"	14	"
Jos. Cuthbert	"	26	Franklin, p. 78.
Jos. Cuthbert	"	27	"
John Hamilton	"	23	Washington.

Ordered, that the vendue-house be leased on the 1st October next to the highest bidder for one year, the purchaser giving security for payments of rent.

Min. Sept. 2, 1794.

Mr. Berrien, agreeably to ordinance, reported that the following lots had reverted to the city in terms of the ordinance, viz:

9 lots, 3 in Franklin, 4 in Washington, 2 in Warren.

On application of William Clark praying to relinquish to Mr. Charles Washington, his right and title to No. 25, Warren ward, which he purchased at public sales and which relinquishment on the part of said Clark, and consent to receive was entered into before council.

58

Resolved, That council will execute titles to the said Mrs. Washington of said lot, whenever it shall appear that all increase money and arrearages of rents shall have been paid.

Similar petition by Nicholas Turnbull to relinquish his right and title to his lots Nos. 23 and 24, Warren ward, to John Berrien and to lot 12, Warren ward, to James Box Young; ordered, that council will, immediately after all ground rent and increase money shall have been paid, execute titles to Berrien and Young.

Similar petition by Phenis Miller for permission to transfer his right and title of his lot No. 30, in Washington ward, to Hon. Nathan Pendleton.

Resolved, That he be at liberty to transfer his said lot and that council executes titles to Mr. Pendleton, when all arrears of ground rent and increase money shall be paid.

Min. April 6, 1801.

That public notice be given of sale of 40 lots in Elbert square.

April 20, 1801, Joseph Clay, Thos. Young, Geo. Jones, Jno. P. Ward and Ulric Tobler or any three of them, a committee, to sell lots on Tuesday, 2d June next, at 10 o'clock.

On motion of Alderman Eppinger, resolved, that the treasurer and marshal be required to furnish the council at their next meeting, a statement of the real and personal estate belonging to the corporation, with an estimate of the value of such description of property annexed thereto.

The city treasurer and city marshal, in compliance with the resolution of council of 17th inst., made the following statement of the real and personal estate belonging to the corporation, with an estimate of the value thereof annexed thereto.

Real Estate Belonging to the City of Savannah.

32 lots in Berrien ward, paying 6 per cent. per annum, valuation	$21,426 47
41 lots in Jackson ward, paying 6 per cent	22,723 32
Amount paying rent at 6 per cent	$44,151 79
32 lots in Columbia ward pay- 5 per cent	27,347 79
34 lots in Elbert ward	22,995 30
31 lots in Franklin ward	18,123 88
16 lots in New Franklin ward	14,804 66
59	
31 lots in Green ward	17,293 76
29 lots in Liberty ward	16,100 00
19 lots in Warren ward	7,157 32
32 lots in Washington ward	9,704 14
11 lots in Springhill, paying 5 per cent	5,500 00
3 lots in the canal	7,700 00
Filiature lot on Reynolds square	2,000 00
Amount paying rent at 5 per cent	$148,736 85
Market in Ellis square, net revenue from which about 8½ per cent. on the valuation	20,000 00
Exchange building, part of which is rented for	630 00
The remainder, used for city officers, council chamber and other purposes	20,000 00

Amount of value of real property which now produces a revenue to the city:

Amount of value of city lots paying 6 per cent	41,151 79
Amount of value of city lots paying 5 per cent	148,736 85
Market and exchange building	40,000 00

	Real property from which no revenue is at present derived:	
5 lots in Berrien ward in possession Chatham academy.		4,000 00
1 lot, No. 48, Jackson ward		450 00
76 lots east of cemetery and south of S. Broad street, at $300		22,800 00
9 lots in Liberty street and south of the cemetery		2,700 00
Town common, south of Liberty street and between the eastern, southern and western boundaries of the city, which, according to a map of the city, certified to by Mr. McKennen and Wright in 1829, may be laid out into 406 lots, 10 of which have been sold to the United States, remainder 396 lots, valued at $300		118,800 00
12 lots Springhill, including 25-acre lots		7,060 00
Eastern moiety of Fig island		500 00
Value of unproductive real property		167,310 00
	Total value of real estate of the city	400,198 64
	Personal property:	
100 shares in Savannah, Ogeechee and Alabama canal		10,000 00
6 slaves		1,850 00
	Total value of real estate brought forward	$400,198 64
60	Value of personal property brought forward	11,850 00
	7 mules and 1 horse	500 00
Carts, &c., &c., for scavenger department		200 00
Value of personal property		125,500 00
	Total value of property belonging to the city of Savannah	$412,748 64

Lot letter S, Reynolds ward, be set up and exposed for sale at valuation of $3,000, on the same terms and conditions with lots in Jasper and other wards south of Liberty street, and on further express condition that no wooden building shall ever be erected on the lot.

The mayor's reports, made annually to council in pursuance of ordinance and published for information, commencing as far back as published reports have been found, to wit, October 31, 1854, and up to the year 1877, contain the following:

Statement of the Resources of the City of Savannah, October 31, 1854.
Report of John E. Ward, Mayor.

Stocks at par value (here follows a -ment of the various railroad and other stock owned by the city and valued at)			$899,500 00
City domain:			
643 lots, 22 wards, under lease	$488,192 29		
36 lots, Springfield plantation	19,234 80		
		$507,427 09	
Lots laid off and valued, not under lease		70,200 00	
Approximate value of land not laid out and valued 20 lots south of hospital	18,000 00		
20 lots east of hospital	20,000 00		
		38,000 00	
9 acres old Cantonment ground, reserved for city lots		20,000 00	
Remainder of Springfield plantation		80,000 00	
61			
Site purchased for water works		22,000 00	
			737,627 09
Stock and domain as above			$1,637,127 09

October 31, 1855.—Report of E. C. Anderson, mayor, omitting statement of stocks at par, has the following statement as to city domain:

644 lots in 22 wards under lease, valued at	$489,902 20
36 lots in Springfield plantation	19,234 80
Lots laid off and valued, not under lease	70,200 00

Other property not laid off nor valued, but approximate value given.

October 31, 1856, E. C. Anderson, mayor, contains a similar statement of city domain. Similar statements are also contained in the mayor's reports for 1857, 1858, 1859, 1860, 1861, 1862, 1863 (no mayor's report for the years 1864 and 1865), 1866, 1867, and so on each year through 1877. The value of the city lots reported under lease were variously stated from the valuation in 1854 at $488,192.29, which continued about that average until about the year 1871, when the valuation was increased to 693 lots under

lease valued at $2,015,000.00, and continued at that valuation until 1877.

In settling with Mr. Ephram Cooper for taking part of lot in New Franklin ward the committee of council recommended payment of $250 to be deducted from the valuation, and a new lease granted for 58 feet, &c.—Min. June 30, 1806, p. 255.

Resolved, That the treasurer report to council at their next meeting the amount due the city for rents on city lots.—Min. Dec. 22, 1806.

Treasurer having laid before council a statement of rents due for city lots July 28, 1807.

Memorandum of "fee-simple" lots taken from records in possession of city treasurer.

Date.	Lot No.	Ward.	Tything.	Assessed value.	Rate.	Amount.	Per cent. off.	Amount paid.
1808	4	Percival	Moore	$2,000	25c.	$5 00		$5 00
1808	10	"	"	2,500	per	6 25		6 25
1808	1	"	Sloper	2,000	$100.	5 00		5 00
1871	1	"	"	5,000	1 p. c.	50 00		50 00
1878	1	"	"	2,000	2½ p. c.	50 00	5	47 50
				Average value about				Per year
1873	.....	Cuthbert	.....	1,200	1 p. c.	.....	.....	12 00
1878	.....	.....	.....	350	2½ p. c.	8 75	5	8 31¼

Lot.	No.	Ward.	Appraised value.	Increase.	Total value.	Unpaid balance.	Rate. per cent.	Annual ground rent.	Paid on since—
	7	Greene			$775 00	$652 50	5	$32 67	1805
	9	"	$250 00	$700 00	950 00	855 00	5	42 76	1805
	10	"	200 00	470 00	670 00	603 00	5	30 16	1805
	36	Liberty				600 00	5	30 00	
	29	"			930 00	600 00	5	30 00	
	1	Warren			604 28	428 57	5	21 44	
	2	"			432 85	364 28	5	18 22	
	6	Washington			366 42	321 42	5	16 08	
	8	"			449 99	385 21	5	19 28	
	8	Greene	250 00	750 00	1,000 00	900 00	5	45 00	1805
	6	Lloyd	1,200 00	150 00	1,350 00	1,080 00	7	75 60	
E. ½	17	"	1,300 00	850 00	2,150 00	1,720 00	7	120 40	
	20	"	2,800 00	1,500 00	4,300 00	3,440 00	7	240 80	
	28	"	1,500 00	435 00	1,935 00	1,548 00	7	108 36	
	30	"	1,600 00	195 00	1,795 00	1,436 00	7	100 52	
	33	"	1,400 00	175 00	1,575 00	1,260 00	7	88 20	
	41	"	2,500 00	625 00	3,125 00	2,500 00	7	175 00	

259

64 *Taxes Collected from Plaintiffs in Addition to Ground Rent.*

	Valuation.	1890.	1891.	1892.	1893.	1894.	1895.	1896.
David Wells	$15,000	$225 00	$225 00	$225 00	$225 00	$225 00	$225 00	$225 00
Wm. Kehoe	2,700	40 50	40 50	40 50	40 50	40 50	* 29 25	29 25
D. G. Purse	4,000	60 00	60 00	60 00	60 00	60 00	60 00	60 00
T. Ballantyne	3,300	49 50	49 50	49 50	49 50	49 50	49 50	49 50
H. Blun	4,900	73 50	73 50	73 50	73 50	73 50	73 50	† 43 50
C. M. Gilbert & Co	9,250	138 75	138 75	‖ 146 25	146 25	146 25	146 25	146 25
R. McIntire	19,950	299 25	299 25	299 25	299 25	299 25	299 25	§ 288 75
M. E. Douglass	5,200	78 00	78 00	78 00	78 00	78 00	78 00	78 00
D. O'Connell	800	12 00	12 00	‡ 17 25	17 25	17 25	17 25	17 25

* Valuation appears as $1,950 00
† " " " 2,900 00
‖ " " " 9,750 00
§ " " " 19,250 00
‡ " " " 1,150 00

Aggregate Payments.

Wells	$1,575 00
Kehoe	261 00
Purse	420 00
Ballantyne	346 00
Blun	484 00
Gilbert	1,008 25
McIntire	2,084 25
Douglass	546 00
O'Connell	110 25

65 The city marshal reported to city council the sale of city lots under the ground-rent plan from time to time during the following years:

1870.			
March	3.	Lot 61, Forsyth ward	$4,575
"	17.	Lot 21, Wesley ward	1,527
"	31.	Lot 38, Lloyd ward	2,005
"	31.	Lot 39, Lloyd ward	2,010
"	31.	Lot 46, Lloyd ward	2,010
"	31.	Lot 51, Lloyd ward	2,700
"	31.	Lot 52, Lloyd ward	2,900
April	13.	Lot 10, Charlton ward	2,005
"	13.	Lot 74, Stephens ward	3,525
1871.			
Oct.	11.	Lot 44, Stephens ward	1,827
"	31.	Lot 57, Lloyd ward	3,080
Nov.	23.	Lot 59, Forsyth ward	2,625
Dec.	31.	Lot 17, Lloyd ward	4,300
"	31.	Lot 18, Lloyd ward	3,850
"	31.	Lot 20, Lloyd ward	4,300
"	31.	Lot 62, Lloyd ward	2,800
1871.			
Feb.	28.	Lot 58, Lloyd ward	2,750
"	28.	Lot 63, Lloyd ward	2,275
"	28.	Lot 70, Lloyd ward	2,310
April	11.	Lot 48, Forsyth ward	4,250
"	11.	Lot 75, Lloyd ward	3,375
"	25.	Lot 25, Forsyth ward	2,100
May	11.	Lot 9, Crawford ward, east	2,230
"	25.	Lot 51, Crawford ward, east	2,250
"	25.	Lot 52, Crawford ward, east	3,130
June	7.	Lot 42, Stephens ward	2,265
"	7.	Lot 43, Stephens ward	2,655
"	7.	Lot 46, Stephens ward	2,550
1872.			
1871.			
June	7.	Lot 41, Forsyth ward	2,330
"	7.	Lot 44, Forsyth ward	2,355
"	28.	Lot 32, Lloyd ward	2,700
Sept.	25.	Lot 57, Forsyth ward	2,525
"	25.	Lot 41, Lloyd ward	3,125
"	25.	Lot 44, Lloyd ward	3,175
1872.			
Feb.	29.	Lot 6, Crawford ward, east	1,140

To this report the city marshal adds, "Owing to the resolution passed by the city council requiring cash payments instead
66 of the old ground-rent system, application- for lots have ceased."

In the mayor's reports for 1873 the city marshal reports but two

lots sold—and from 1874 to 1878 inclusive that there have been no demands for sale of lots.

In 1879 he sold lot 48, Lloyd ward, for cash, $375.

Lot No. 59, Lloyd ward, one-fourth cash, balance in one, two and three years, for $351.

In 1880 lot No. 12, Charlton ward, for $451, one-third cash, balance in one and two years.

Lots 45, 46, 47 and 48, Wylly ward, for $913 cash.

Lot 41, Forsyth ward, for $550, one-third cash, balance in one and two years.

The grand jury having recommended the necessity of a guard or city watch on the 17th of June, 1805, the committee of the city council made the following report: "It appears to your committee that the expense of the city watch or guard is far beyond the reach of the present resources of the corporation, and on examination of the acts of the legislature by which the city council is constituted and by which its powers are defined, your committee find that the power of raising money by taxation is confined to the mere purpose of defraying the ordinary incidental expenses of the corporation, it is therefore earnestly to be wished that our successors in office may present a memorial to the legislature praying for their interposition and aid by an act either increasing the powers of the incorporation in this respect or for levying a certain tax to be appropriated to the support of a city guard or watch, under the immediate control and direction of the corporation."

The finance committee were requested to report the sums received the last year, and on what account, so as to afford a general review as well of the services from which the revenue of the city has arisen as of the uses to which it had been appropriated. The finance committee submitted a statement of the treasurer's receipts, etc., for the last year, as follows:

Receipts.

By cash received for ground rent	$7,472 63½
" " " " stall rent	652 00
" " " " fines	3,634 71
" " " " extra market fees	57 43¾
" " " " licenses	4,675 00
" " " " theatrical ex	210 00
67	
By cash received for lots sold	345 60
" " " " badges	322 00
Bal. in treasury 17th July, 1804	3,052 54½
	$20,421 92¾

At a special meeting, Dec. 9, 1805, the mayor laid before council an act of the legislature lately passed authorizing the mayor and aldermen to assess and levy a tax for the purpose of establishing a regular watch in the city.

At the same meeting a committee was appointed from the aldermen to prepare and report a bill for assessing and levying the tax.

At a meeting on Friday, Jan. 3d, 1806, this committee reported a bill to council for assessing and levying the tax, which was read for the first time.

This bill was taken up and debated at the meeting of council of Feb. 1st, March 24th and 27th, and was ordered to be twice published for the inspection of the citizens.

On April the 7th, 1806, the bill was read the third time, and passed into an ordinance under the title of an ordinance for the support of a watch in the city of Savannah; and it was then ordered that the same be signed by the mayor and published in the Gazette of this city.

The ordinance then adopted so far as applicable to this case, was as follows:

"An ordinance to raise a fund for the support of a watch in the city of Savannah.

"1st. Be it ordained, by the mayor and aldermen of the city of Savannah, and it is hereby ordained by the authority of the same, in conformity with the act of the legislature in that case made and provided, That for supporting a public watch in the city of Savannah, a tax shall be levied on property and persons within the limits and jurisdiction of the said city, as follows, to wit: On all houses, buildings, lots and wards within the said city, as well unimproved as improved, and including all lots held by lease from the corporation, twenty-five cents on every one hundred dollars thereof, to be assessed and valued by the assessors appointed by virtue of this ordinance, and to be paid by the owner thereof.

"2d. * * *."

At the meeting of council May the 19th, 1806, it was resolved that this tax ordinance should be recommitted to a select committee to report to council at their next regular meeting such amendments as they should deem necessary. Aldermen Howard, Williamson and Davis were selected as this committee.

68 At the meeting of council on August 25th, 1806, Aldermen Fleming, Harden and Williamson were appointed a committee to revise the said tax ordinance, and to report by bill such amendments as they may deem necessary and proper.

On September 8th, 1806, the committee appointed to revise the ordinance reported that they had taken the liberty of recommending a few alterations in the said ordinance and for that purpose herewith a bill.

The amended ordinance so reported was read the first time and ordered to be read a second time at the next regular meeting.

On October 27th, 1806, the ordinance was read a second time and debated, and at a special meeting of council held at 4 o'clock p. m. of the same day, the ordinance was again taken up, further debated and amended in part, and it was ordered that the further consideration of the same be postponed until the Monday next.

On November 10th, 1806, the ordinance was again considered and amended and ordered to be engrossed for a third reading at the next regular meeting, and on November 24th, 1806, it was read a third time and passed.

The ordinance so passed was as follows:

"An ordinance to amend an ordinance entitled An ordinance to raise a fund for a watch for the city of Savannah, passed April 7th, 1806.

"1st. Be it ordained by the mayor and aldermen of the city of Savannah, in council assembled, and it is hereby ordained by the authority of the same, That so much of the first section of the aforesaid ordinance as imposes a tax on lots held by lease from the corporation * * * be, and the same is hereby repealed."

It is admitted and agreed that every tax ordinance to raise revenue for the city passed by the mayor and aldermen from the above ordinance of November 24, 1806, up to and including the ordinance of January 22, 1857, used the same expression as above quoted, to wit: "Excepting lots held by lease from the corporation."

An ordinance to prescribe the mode of assessing and collecting taxes in the city of Savannah, passed December 11, 1857, Wilson's Digest, page 440, provides: Section 3. "The phrase 'real property' as used in this ordinance shall be construed to include land itself, and all buildings and other fixtures erected upon land, whether the land upon which such buildings and other fixtures may be erected be, or be not itself, subject to taxation. Section 4. The following real property shall be exempt from taxation, to wit: Each
69 lot of land held at the time of the passage of this ordinance upon the payment of ground rent to the mayor and aldermen of the class commonly called city lots." * * *

The tax ordinances from 1866 to 1874 in assessing the tax on real estate in said city used the following language: "Taxes shall be assessed, levied and raised at and after the following rates, that is to say: 1. At the rate of — per cent. per annum on real estate in said city according to the valuation of the year ——."

The tax ordinances of the years 1874, 1875 and 1876, assess the tax on real estate in the following language: "Every person holding real property in said city, including improvements on lots subject to ground rent, shall pay a tax of — per cent. on the value of such property."

In the comparison of the tax digests in the mayor's reports of Thomas M. Turner for the year 1858, of R. D. Arnold for the year 1860, of C. C. Jones for year 1861, of Thos. Purse for year 1862, and of Thomas Holcombe in 1863, and, also, the same statement in the published ordinances of the city by Edward G. Wilson, page 538, is the following statement: "City lots or lots under lease not being liable to city taxation, are not included in the above comparisons."

The annual report of John Screven, mayor, for the year 1871, the following from page 5:

After setting forth a table showing the increase in value of the taxable real estate within the city for the last three years, proceeds as follows: "These statements do not, however, express the full value of all the real estate in the city of Savannah. It is not known to the foreign public that a very large part of the real estate in the city consists of lots sold on condition of the payment of ground rent, and are, therefore, not the subject of taxation, and are not included in the assessments. These lots, six hundred and eighty in number, constitute a large part of some of the most valuable real estate in the city, and if included in the statement of taxable real estate, would, at a moderate estimate, raise its figures to more than seventeen and a half millions of dollars. A knowledge of this condition of so large a part of the public resources is important to a correct appreciation of the extent of the real estate within the city, and to a just maintenance of the public credit, and for these reasons, involving a matter of sound public policy, the ground-rent lots should be assessed contemporaneously with those held in fee-simple, not with a view to their taxation, but to ascertain correctly the value of all real estate within the city."

It is admitted that the reports of the city treasurer made to city council of the receipts of money from all sources show that no taxes were received from real or personal estate from July 16, 1803, until after the passage of the tax ordinance of November 24, 1806, when the treasurer's report of August 21, 1807, shows:

Receipts on account of city-guard tax:

Received from 736 persons taxes...	$8,962 06¼
Received from 31 persons on commissions on sales....	714 60

It is admitted and agreed that lots known as "city lots" or "ground-rent lots" the right to tax, which is now asserted by the city, were never assessed for taxation until under the ordinance of May 29th, 1878. That said lots are omitted from the assessment books of real estate for city taxes from the first assessment book made in 1807 up to the assessment book made out in the year 1878, which assessment continued in the assessment books of 1884 and 1890, but is omitted in the assessment books of 1888.

It is further admitted that no city taxes were ever levied on said city lots until after the resolution of council of November 17th, 1889, under which these lots have been assessed for city taxation for the year 1890.

It is admitted that no taxes were assessed or levied under the ordinance of April 7, 1806.

It is admitted that no taxes have ever been claimed on the lots known as city lots from the year 1791 to the year 1878; and that the ordinances of May 22, 1878, 1880, 1881 and 1882, assessing a tax on said lots specifically were never enforced, but were suspended by a resolution of council adopted May 23, 1883; and that the levy of the executions in the cases at bar are the only levies that have been

made for taxes on said city lots from the year 1791 until the filing of this petition.

It is admitted that all the lots known as city lots were sold by the city before the year 1872.

It is further admitted and agreed that the holders of city lots have always paid State and county taxes and street improvements and assessments for sidewalks, and all other assessments and burden common to lot-owners in said city except city taxes.

It is admitted that as early as the year 1805 and 1809 that
71 the city had prepared separate digests or registers, to wit: A registry of city lots, and registry of lots in fee-simple.

The committee on finance to report generally on the finances of the city, reported as follows:

The committee on finances, having met from time to time and examined into the state of the finances, report the following as their condition:

The whole debt of the city at this time, funded and unfunded, exclusive of the current monthly expenses, amounts to five hundred and forty-seven thousand seventy-four dollars and seventy-five cents, viz:

City scrip, new emission, in circulation.....	$51,739 00
Corporation notes, old emission and unredeemed.....	2,335 75
Mayor's notes on the Central R. R. bank....	3,000 00
And bonds of $1,000, each dated 1st July, 1839.....	490,000 00

at 7 per cent. interest, principal payable in twenty years and interest semi-annually at the Manhattan bank, N. Y.

These may be considered, with the exception of the mayor's notes, as the permanent debt of the city, and on a large portion of which the interest must be provided semi-annually, viz: upon the whole of the bonds of one thousand dollars dated the 1st of February, 1839. The city scrip is at a mere nominal interest and therefore requires no provision from this board until it is ordered to be redeemed. The semi-annual interest on the funded debt will become due on the 1st February next, and amounts to the sum of $17,321.50, including premium. This the committee would recommend to provide for by authorizing the mayor to negotiate a loan wtth the banks of the city until the anticipated resources of the city come into the treasury, say the 1st May, 1842. A like sum will have to be provided for the semi-annual interest upon the funded debt for the last half of the fiscal year.

Next in order, the committee report the estimated ordinary expenditures of the year, the main items of which are made up of the expenditures of the city watch, the scavenger department and the salaries of the various officers, at $43,632.50.

There is to be added to this the extraordinary expense for repairs and improvements of the city and the city property, such as erecting stables, building sewers and repairing the jail, estimated at $3,058.27. These sums, with the interest of the funded — before mentioned, will bring the whole expenses of the current year to the estimated sum of $81,335.87, $65,701.00 of which are the estimated

aggregate expenses of the city, exclusive of the interest upon
72 the funded debt. The committee have more anxiously deliberated upon every possible means of meeting this large expenditure, and it has as yet been able to discover none other than the old-fashioned one of taxation. It is scarcely worth while at this late day to discuss the prudence of entering into the largest items of these liabilities, it is sufficient that they were authorized by the citizens themselves in primary meeting. It therefore becomes them to meet the necessary consequences manfully and promptly. There is perhaps as much city scrip in circulation as the daily wants of the people require, and to issue more would only result in throwing it as a dead weight upon the banks. It will be perceived by the board from the accompanying tables and calculations that the fifty cents additional tax of last year, if laid for this, would not meet the estimated expenditures by something like $20,632.87. In order to raise this sum the board will have to levy additional taxes upon those objects already burthened with heavy rates, or they must seek new sources of revenue from those which have hitherto contributed little or nothing to the support of the city.

The committee are unanimously of opinion that these new sources may be found in the incomes of professional men and commission merchants. The present income from these sources may be estimated in round numbers at about one thousand dollars now, when the estimated sales of cotton alone for the present year will amount to something like 210,000 bags, yielding six millions three hundred thousand dollars, and that the commission of purchase and sale upon them at 2½ per cent. will amount to something like three hundred and forty-five thousand dollars, it will appear to the board how disproportioned have been the taxes imposed upon this class of dealers compared with that paid by their fellow-citizens.

The committee therefore recommend that in addition to last year's rate of taxation there be imposed upon all professional men, commission merchants, brokers and dealers in rice, cotton and lumber, a tax of half per cent. upon their incomes, to be ascertained by returns made upon oath by themselves annually, and to be compulsory as more fully to be provided and set forth in the ordinance hereafter to be reported, should the board think proper to adopt the suggestions of the committee.

This plan, the committee is credibly informed, has been in successful operation in Charleston for many years. The estimated receipts from this source amount to seventeen thousand two
73 hundred and fifty dollars, which, added to the estimated means from other sources, will yield the sum of $85,951.00, leaving a probable balance in the treasury at the end of the year of $1,617.13.

The fund invested in the stock of the Savannah, Ogeechee and Altamaha canal, as well as the loan to said company, both principal and interest, the committee believe to be wholly unavailable, should the company ever be able to pay anything either of the principal or interest, it is recommended to apply the means so received

to the redemption of the city scrip, now in circulation, a large portion of which was issued to effect that loan.

There will probably be received into the treasury during the year the sum of $2,535.00 from executions set apart, as against persons owning and representing property, and there are others considered doubtful, also left in the hands of the marshal to the amount of $3,271.10, a portion of which may be collected during the elections which may be held during the year. From both of these sources there will be in all probability, sufficient collected to liquidate the mayor's note, now remaining in bank. To meet any possible contingency by which the estimated resources of this year may fall short of the estimated expenditures, the committee recommend the immediate sale of a portion of the city domain, which, it is believed by the undersigned, may now be effected to considerable advantage, and they are led to believe that many lots are wanted for the purpose of building.

There may also be a falling off in the estimated resources from the tax on incomes, in consequence of our inability to define accurately how much of the cotton and rice estimated as the crop of the year, may be sold on commission, so much of it as may be purchased and shipped by owners without commission would of course fail to yield any revenue, but it is believed by the committee that any such deficiency will be more than made up by the tax on sales and purchases of lumber and other merchandise sold on commission.

There is submitted, appended to this report, a series of questions by the committee and answers by the treasurer, which will furnish in a clear and more detached manner everything relating to the finances of the city which the board or the citizens may desire to learn. The committee would recapitulate the sum and substance of the foregoing thus:

Estimated liabilities on the city for the current year:

	Interest on public debt	$34,634 00
74	Ordinary expenses	43,632 50
	Extraordinary expenses	3,058 37
	Mayor's note	3,000 00
	Aggregate	$84,333 87

Estimated resources of the year:

From taxation at rate of preceding year	$65,701 00
From tax on incomes	17,250 00
From executions and sales on damage	3,000 00
	$85,951 00

Estimated balance at end of the year, $1,617.13.

ELIAS REED,
W. A. CARUTHERS,
RICHARD D. ARNOLD, *Committee.*

Meeting Dec. 16, 1841.

Min. April 25, 1839, p. 148.

An ordinance passed pursuant to resolutions of Dec. 16, 1841, on report of finance committee.

Ordinance amendatory of and in addition to existing tax ordinances of city of Savannah for raising supplies for support of a watch and for other purposes.

Preamble.

Whereas, in the opinion of this board the revenue of the city arising from ordinary sources and from taxation under the existing tax ordinances will be inadequate to meet the demands upon the city for the ensuing year by reason of the debt created by the subscription to the stock of the Central R. R. and of the deficiency in the usual revenue by the suspension of dividends by the Central R. R. and Banking Co. of Ga. And whereas, in consequence thereof, it is deemed by this board expedient and necessary to continue the ordinances of the last year, adding fifty per cent. on the amount of taxes imposed by the previously existing ordinances of the city.

And whereas, there are various pursuits, occupations and business yielding lucrative incomes and profits to those engaged in them which now bear none or a very inconsiderable portion of the burden of taxation, and it being considered by this board expedient and just as far as possible to equalize that burden among all classes of citizens and in proportion to their advantages and means.

75 SECTION 1. Ordained, that the ordinances passed on 19 March, 1841, by which 50 per cent. was added on the taxes imposed by previously existing ordinances be, and the same is hereby reordained and continued in full force for one year longer.

SEC. 2. On gross amount sales of negroes, goods, wares, merchandise and other commodity and sold in corporate limits by any person on commission, percentage or premium, 50 cents on every hundred dollars of the amount of such sale, except not to extend to rice, cotton or lumber, or goods, etc., sold at public auction by vendue masters, parties to make returns on oath 1st May annually.

SEC. 3. On sales of rice, cotton and lumber, 25 cents on every $100.

SEC. 4. Persons liable to tax and failing to return, should be liable to tax $200 and *fi. fa.* to issue.

SEC. 5. From income from commission charged on purchases and collections of freight, 1 per cent. return on May 1st, or $200.

Purchasing cotton, rice, ¼ of 1 per cent.

SEC. 6. Profits from pursuit of profession, law or physic, on incomes under $1,000, $7.50; under $1,500, $12; $2,000, $17; $2,500, $22.50; over $2,500, $25.

$40 if no returns. Mechanics exempt.

SEC. 7. Dentists, $15.

SEC. 8. Public officers of State, county and city, and bank clerks, with salary, &c., $1,000, $1 on every $100.

SEC. 9. Transient trader, $50.

SEC. 10. Horse-, mules, $1 on each brought to be sold.
SEC. 11. Repealing clause.
Passed January 24, 1842.

Extracts from minutes of city council, meeting of Jan. 17th, 1872.

* * * * * * *

Reports Adopted.

The finance committee beg leave to report upon the communication of Dr. L. A. Falligant with respect to the taxation of what are called "city lots," that they find it unnecessary to consider the nature of the estate vested in the purchaser of such a lot. That subject seems to have been fully disposed of by a decision made in the superior court of Chatham county in January, 1807, which, so far as your committee are informed, has ever since been accepted as settling the law of the case.

The reason why city lots are not taxed beyond the ground
76 rent is that the city is understood to have bound itself not to tax them.

The ordinance of 1799, which was the first to provide for the sale of lots on these terms, contains a stipulation that the purchaser of such a lot, and all claiming under him, shall have the use, &c., upon paying the ground rent. This ordinance has been followed, either in terms or substance, by all succeeding ordinances providing for such sale.

It is of no moment that the stipulation does not appear in the deeds, the ordinances contain the real terms of the contracts and control the deeds, whenever the latter depart from or conflict with them. And as the city has never taxed such lots, it is difficult to resist the conclusion that such was the design when the ordinance of 1790 was framed.

Your committee, however, are free to say that they doubt the policy of continuing to dispose of the public domain on such terms. Heretofore lands thus sold by the city have been chiefly, if not wholly, parts of the "common," which could be judiciously used in that way. But hereafter the city will probably have no domain save such as it will have to purchase at a high price, and such land could not be granted in "city lots" free from taxation without a loss, for which no equivalent would be received. And your committee recommend that the committee on public sales and city lots be requested to take this subject into their consideration.

WM. HUNTER, *Chairman.*

An ordinance to tax ground-rent lots, passed in council May 29th, 1878.

SECTION 1. Be it ordained by the mayor and aldermen of the city of Savannah in council assembled, and it is hereby ordained by the authority of the same, That the second section of the above-recited ordinance be and the same is hereby amended so as to read as fol-

lows: "Every person and corporation owning real property in said city, including improvements, shall pay a tax upon said property of two and one-half per centum of the value thereof including ground-rent lots, except on such property as may be exempt from taxation under the laws of this State."

SEC. 2. And it is hereby further enacted by the authority of the same, that all ordinances and parts of ordinances conflicting with this ordinance be and the same are hereby repealed.

77 At meeting of city council of November 19th, 1899, resolution was passed to enforce the ordinance imposing a tax on grount-rent lots and directing that these lots be assessed for taxation for the year 1890.

Depositions of GEORGE W. WYLLY, for the plaintiff, sworn:

Have resided in Savannah since boyhood, at least fifty-five years; spend winters in Florida; visit the city often; have been an alderman far back as 1858 and 1859, and almost consecutively and down to and as recently as 1869; I was chairman of the committee on public sales and city lots most of the time. As such chairman I superintended the sale of city lots and reported the same to council. I have been present at such sales made by the mayor and aldermen under the ordinances passed for that purpose. I attended such sales in the discharge of my duty as chairman of the committee on public sales and city lots. The sales were conducted by the city marshal, who offered the lots to the highest bidder under the terms on which ground-rent lots were usually sold, and under the supervision of the committee. There was always a minimum price or value which was fixed by the city council, or by the appraisers appointed for that purpose; purchasers had the option to buy in fee-simple, paying the entire amount of the bid, or they could take the lot on a perpetual lease, paying 20 per cent. of the purchase-money down and an annual ground rent, payable in quarterly instalments, based on a certain per cent. of the balance of the bid, either 6 or 7 per cent.

The purchaser had the further option to make the lot fee-simple at any time by paying up the balance of the purchase-money and obtaining a fee-simple title from the city. The announcement and terms were made by the city marshal by direction of the committee, and I, myself, as chairman, directed him to do so. He would usually read the advertisement and then the particular lot offered, stating the valuation the city had placed upon it, then state the option that the purchaser could buy either fee-simple or on the ground-rent plan. If fee-simple, the entire purchase-money would be payble on execution of title; if on ground-rent plan, 20 per cent. of bid to be paid in cash and an annual ground rent either 6 or 7 per cent., according to the ordinance, on the balance of purchase-money, payable quarterly; would also announce that so long as the lots were held under ground-rent plan they would be free from city taxes. These announcements were made under authority of the committee. And often when the bidding would lag, the mar-

shal would remind the bystanders that there was only a 20 per cent. cash payment required, and that there was no city
78 taxes, but only an annual ground rent. The mode and manner of sale was uniform and conformed to the plan aforesaid. It was only a repetition of terms which were familiar to every citizen, and only expressed the common and universal understanding of the manner in which ground-rent lots were sold by the city and held by the purchaser. The difference in the terms was that the entire purchase-money would be required to be paid in cash if the purchaser wanted a fee-simple title while only 20 per cent. of the purchase-money was required if the purchaser wanted a lease on ground rent; and to secure the highest prices and highest ground rents the city would further announce the right to hold the lot free from city taxes so long as the ground rents were paid, and the privilege of having the lease changed to a fee-simple title at any time by paying up the balance of purchase-money.

There were no inducements offered to purchasers on the ground-rent plan. They were free to bid either for a fee-simple or a lease. The terms were distinctly announced and parties could exercise their option. A purchaser would be willing to bid more for ground-rent plan than if he had to pay the entire bid in cash. The effect of the offer of such option was to secure the city better prices than would a sale of the absolute title. A striking instance of this was shown in a sale in Lloyd ward where a lot back of the old jail sold on the ground-rent plan for $3,000, and immediately after the sale, at the same time and place, I offered for sale to the same bidders, a lot on the block where the Massie school-house is situate in fee-simple and although further in the city, in location, the same was bid in and sold for about $800 cash.

The city was heavily in debt and large amounts were borrowed from time to time from the banks to meet the obligations of the city. Every kind of property and almost every kind of business—in a word, everything that was considered taxable, was taxed. Ground-rent lots were not taxed because under the contract and terms under which they had been sold, they were not taxable.

There never was a question during the entire period of my services as an alderman as to the meaning of the deed under which the ground-rent lots *was* conveyed by the city. The city had all the powers to re-enter for non-payment of ground rent, and the holder had the right to hold under a perpetual lease as long as he paid the ground rent when due. The city had no power to tax the ground-
rent lots. I feel sure that such was the universal construc-
79 tion of these contracts, and such were the public announcements made from time to time by the mayor in his annual report; and such was the understanding in all transfers of such lots among individuals, and in all sales the lots are described as city lots subject to an annual ground rent. The holders had to pay State and county taxes and city taxes on the improvements and pay for paving sidewalks. They were subject to the same restrictions as to the building line and character of buildings to be erected thereon. No other assessments or burdens were imposed by the mayor and

aldermen at any time within my knowledge, nor did any board of aldermen ever assume to assert the right to impose any others up to the time the city ceased to sell city domain on the ground-rent plan. I own some fee-simple lots and one ground-rent lot or perpetual-lease lot from the city. I know nothing further except that no question was ever raised, that I have any notice or knowledge of, that ground-rent lots were subject to taxes until after the city stopped selling city lots on the ground-rent plan.

The city was often in need of money, but no attempt was ever made to raise money by taxing city lots. The common and universal understanding was that such lots had been sold on a certain ground rent, and so long as that ground rent was paid the city had no other claims on the holder.

Cross-examination:

I do not remember the names of the city marshals, but the records of the city will show who they were during the period I was alderman from 1858 to 1869, inclusive. Some may be dead. The very words used by the marshal in announcing the terms could not be exactly stated by me now, but I have stated them substantially. The city, in the terms of sale announced by the city marshal when selling city lots, made under the supervision of the committee of public sales and city lots, distinctly agreed not to tax ground-rent lots so sold.

The city ordinances levying taxes exempted city lots from taxation and the city in its deeds to these lots required only the payment of ground rent and agreed not to disturb the holder so long as he pays the ground rent. I have read the published official statements of the mayor in his annual reports to the effect and in the precise words, "that city lots or lots under lease not being liable for taxation," are not included in a comparison of the tax digest. I, myself, as a city official, in good faith, have made the state-
80 ment and directed the marshal so to announce when making sales of city lots under my supervision as chairman of the committee on public sales and city lots, and under the common and universal construction of the city deeds the absence of any reservation of a right to tax the lots sold under ground rent had always been construed as an agreement not to tax.

I have held the city lots now owned by me for forty years and over. I do not recollect the exact date of the purchase. I bought it as a ground-rent lot, and never paid taxes on it until last (1891) year. I claim to own it under the perpetual lease originally given by the city, subject to the terms of that lease.

I have bought and sold such property, but always with the distinction that has always been observed as ground-rent lots and not as other property held in fee-simple. The present value of the ground-rent lot held by me is about $7,000. I do not know what I could sell it for, as I have never tried to sell it. If a purchaser were to step in my shoes and have to pay the taxes on the lot, which the city seeks to oblige me to pay in addition to the ground rent I have agreed to pay under original lease from the city, he would not

pay as much as if he had the assurance that the lot was subject only to the ground rent and was not liable to city taxes. I know I could get more money for it as a ground-rent lot not subject to taxation, than I could for it either as a fee-simple lot or one subject to ground rent and taxes.

ALFRED HAYWOOD, for the plaintiff-, sworn:

I am 74 years old and reside in this city. I have resided here since 1842. I have been present at sales of the city domain, known as city lots, sold on what was commonly called ground-rent plan. The terms of sale were announced by the city marshal, who conducted the sale at public outcry. The purchasers could pay 20 per cent. of the purchase price, and retain the balance as long as they pleased, paying on such balance certain interest to be called ground rent, and that the lots thus sold would be free from taxation by the city. These terms were publicly and openly stated by the marshal. The city marshal, and I think the city treasurer, conducted the sale. The terms stated were made as the general terms on which the city offered these lots for sale. I purchased lots from the city at such public sale to be held on ground rent. I was influenced as a bidder by the terms offered and announcements made.

I have been an alderman of the city of Savannah, I think, three times. I served four years. No city taxes were levied or at-
81 tempted to be levied by the mayor and aldermen on the lots known as ground-rent lots, or lots held under lease of the city during that time. I don't think any one then had any idea that they were subject to taxation by the city. That is the only reason why they were not taxes that I can think. During my term of service there was both a large floating and large bonded debt due by the city. The issuing of bonds was resorted to in order to raise money. I think my service was 1869, 1870, 1871, and 1872.

Cross-interrogatory:

I cannot recollect the name- of the city marshals, they are all dead, and I cannot give the exact language used by them, but it was in effect as set out in my answer above. I don't say that the city of Savannah ever at any time formally agreed not to tax ground-rent lots. I do not know of any official action taken thereon by the city. I have heard the city marshal in selling these lots state that they were not subject to taxation by the city, and that they would not be taxed by it. I have heard the marshal say that the city agreed not to tax them. He would use the statement as an inducement to bidders to buy or increase their bid.

I cannot tell the exact date of my purchase, but think it was in 1857. I have always claimed to own the property subject to the payment of ground rent until I had it made fee-simple. I have sold such property as I would other property. I have not bought any.

The following testimony of this witness was ruled out by the court over objection of the plaintiffs:

"The relation between the city and holders of these ground-rent lots were much those of landlord and tenant. So I considered them. The interest or title the city has claimed to have in said lots was fee-simple interest."

GEORGE N. NICHOLS, for the plaintiffs, sworn:

I have resided in this city 75 years. I served as an alderman ten years. During part of the time I was chairman of the committee on public sales and city lots. I cannot swear particularly whether during the time I was chairman I was present at any sales of city lots. George W. Stiles was marshal at the time.

I know of the sale of some of the lots in the south common. According to my best recollection the sale was in 1871. There were three lots offered. The city had valued the lot at so much, and whatever amount over that they would bring; the purchaser
82 was to pay 20 per cent. of the purchase-money, the assessed value and increase money; and the balance was to remain at interest at the rate of 7 per cent., and there would be no other taxes except the interest; no taxes on the property. The property would be exempt. I don't remember anything said at the time about making the property fee-simple. It was optional whether the purchaser paid all down and got a fee-simple title or paid the 20 per cent. and paid ground rent in quarterly payments. It was to be paid in the capacity of ground rent, not interest. If the whole purchase-money was paid the purchaser got a fee-simple title. My lot is ground rent. I bought two lots at that sale. I took them on ground rent. I did not pay any taxes on them. It was understood if I took ground rent I would have no taxes to pay. The effect of this was to make it bring a higher amount. They brought more than they would have for cash.

The lot I own now as trustee is in Chatham ward. I only had to pay the ground rent on that up to five or six years ago. I have to pay $60 taxes on it, I think. The ground rent is $56. The taxes are more than the ground rent.

I think that was the only sale I attended except as one of the members of the committee. Mr. M. J. Solomons was chairman, and I do not remember the other member. I did not speak to the marshal about making the sale. I did not correct him in making the announcements because that was the usual way he did that.

Cross-examination:

Mr. Stiles is dead, and has been for a number of years. In making the sale he stated that the lot would be subject to no taxes whatever, and if the party paid the interest on the balance of purchase-money there would be no other taxes, that is my recollection. I am positive as to it.

My opinion is where a man got a ground-rent deed he did not get title to the property. I was not aware of the court holding differently. I think the minutes of council will show it.

JOHN KELLY, for the plaintiff-, sworn:

I have been a resident of Savannah 46 years. I have been present at sales of lots by the city. I think it was in 1872. Thomas N. Wayne was city marshal; he put the lots up for sale at the valuation the city put on them. I bought one of the lots in Crawford ward, east. I could not swear now that he made the state-
83 ment, but I bought the lot with the understanding that they were to be free from taxes, if I paid the ground rent. I could have bought the fee-simple if I had wanted it. I got my impression that the lots would not be subject to taxes from the public. I would not like to swear that the marshal made the announcement, but think he did. That was the understanding under which I bought the lot.

JOHN C. ROWLAND, for the plaintiff-, sworn:

I was city assessor in 1889, when the assessment was made. At the time we assessed the value of the ground-rent lots upon the same basis as if it had been fee-simple, as to market value.

If a fee-simple lot is next to a ground-rent lot located in same locality, we did not make any difference because one was fee-simple and the other was ground rent. We put on them the same value. If the fee-simple was $4,000 and the ground rent was equally advantageous, we made them the same value. We assessed them at the market value.

The ground-rent lots are not as valuable as fee-simple lots if they are to pay taxes in addition to ground rent.

You could not sell the ground-rent lot for as much as a fee-simple lot, as it would depend upon the location, the amount of the ground-rent money due, its value would be diminished; of course, by the amount due as ground rent. Encumbrances would have to be removed. It is a common occurrence now in selling ground-rent lots for the purchaser to require the ground-rent balance to be paid.

Recross-examination:

When a holder goes to sell a ground-rent lot the purchaser does not step into his shoes and continue to pay ground rent, as a rule, he requires it to be made fee-simple.

THOMAS DANIELS, for the plaintiff-, sworn:

I have purchased a ground-rent lot. I made inquiries as to the terms of sale, because it had been represented to me that it was free from taxes, and I asked the city marshal at the time of the sale if that was so, and he said yes. That was before I bid on the property. Mr. L. L. Goodwin was the city marshal. There was a great deal of difference in the price of the lots when sold on fee-simple or ground rent. The same lots had sold over again the lot next to where I am living and the corner lot where the church is. I bought one of them, Capt. Dillon bought the next to me. The one next to me had sold for $800 or $900 and the corner for $1,000, before that they sold for $2,700 and $3,000 when they sold as ground rent.

84 Cross-examination:

Mr. Goodwin, who is now dead, represented to me that they were not subject to taxes. It was the general impression at the time that they were not subject to taxes. That was lot No. 46, Stevens ward. In 1869 or '70; in 1869, I think it sold for $2,700, and in 1878 or '79, I think it was 1878 it brought $800 or $900. The great yellow-fever epidemic of 1876, which occurred in the summer and fall of that year, had the effect of depreciating the value of real estate for some time. Real estate was very flat for some years, not a great many, after that. Other lots were sold and afterwards, in the case of Mr. Butler, whose house had burned down, the lot was re-entered and resold. In the first sale it brought $3,000; in the resale on fee-simple, $800; the reason for the difference is that on ground rent the purchaser only paid one-fifth down in cash and would be exempted from taxes, paying interest on the balance by way of ground rent. That was my object in buying, and that is the way I considered it. Lots sold for more than one-half less as fee-simple.

Recross-examination:

City lots sold at the same time as fee-simple would sell for more than twice as much from the fact that they would only have to pay one-fifth cash. There was no selling in 1878. We could not sell anything.

Redirect examination:

The city didn't sell any ground-rent lots in 1878. I was an assessor at the time the city assessed ground-rent lots for taxes; they were not reduced in value because there was any ground rent due, but were assessed the same as the other lots. They were all taxed alike.

Recross-examination:

They were taxed at what the property would bring on the market. We did not consider what the ground rent was. All lots were put down alike.

Be it further remembered that after the plaintiffs had submitted their evidence and had announced that they rested their case,
85 the defendant submitted an oral motion for a nonsuit and after argument had the judge of said court sustained said motion and rendered judgment granting nonsuit and dismissing the petition of the plaintiffs, to which said judgment the said plaintiffs then and there excepted and now except and assign error thereon and plainly and specifically set forth the errors complained to have been committed.

First. That the said judge erred in granting the said nonsuit and dismissing said petition.

Second. That the said judge erred in refusing to submit said cause to the jury upon the evidence with the following instructions

of law applicable to the case submitted in writing during the argument of said cause and directing such verdict as was demanded, to wit:

(*a.*) That in the sale of the lots laid out by the subdivision of the town common the purchaser had the choice of purchasing the absolute fee in said lot, or take a less estate. In the latter case the purchaser had the use and occupation of the premises secured to him and his assigns so long as the valuation money remained unpaid, on the payment of a specific ground rent to the mayor and aldermen.

(*b.*) The estate of the purchaser created by the contract was not an estate of freehold, but an estate for years, the fee remained in the corporation and the right to the use and occupation on specific ground rent accrued to the grantee.

(*c.*) Where by deed realty is conveyed to one and his executors, administrators and assigns to have and to hold with all the advantages thereof, peaceably and quietly to have, hold, use, occupy, possess and enjoy the same and receive and take the rents, issues and profits to his own use absolutely without let, suit, trouble, eviction or denial of the grantor with the right of re-entry for the non-payment of the rent reserved, the relation of landlord and tenant is established. The grantor does not part with the title, he surrenders only the use and occupation of the premises in consideration of the payment of the annual ground rent. And no reconveyance or judgment of ouster is requisite to divest the tenant of any title, but the grantor re-enters in case of default in payment of the rent reserved, to divest the tenant of the possession of the use.

(*d.*) The ordinances and the deed, the published notice of the sale and the announcements made at the sales construed together constitute the contract between the city of Savannah and the purchaser by which the city retained the fee-simple title to the lot and the purchaser obtained the right to the lot and the purchaser obtained the right to the use and occupation of the lot so long
86 as he faithfully paid the annual ground rent in quarterly payments, and his right to the use and occupation to cease in case of default in the payment of the said rent reserved for the space of fifteen or twenty days free from any other charge or tax on the said lot to be imposed by the mayor and aldermen.

(*e.*) The covenant of the quiet enjoyment was expressly conditioned upon the payment of the ground rent at the time and after the manner provided in the contract, and upon the faithful performance of this condition, viz: the payment of the said ground rent at the time and in the manner provided in the contract the city could not determine the said use and occupation, nor could the city increase the amount required to be paid under the name of taxes or any other charge.

(*f.*) The absolute title being reserved to the city and the use and occupation being granted to the purchaser on the specific terms of this contract, the mayor and aldermen could not change the terms of said contract and require from the purchaser any other or fur-

ther sum than the payment of the said ground rent at the times and in the manner prescribed therein.

(*g.*) The imposition of a tax by the city of Savannah on the holders of these ground-rent lots in addition to the ground rent reserved, was a violation of this contract by increasing the annual payments beyond the amount specified in the contract.

(*h.*) The construction placed upon the contract by the parties as shown by the evidence of this intention thereto and acted on by them so long as the grantor continued to make such contracts is binding on the parties and is not within the power of the municipal corporation to change the construction of these contracts as declared and acted on by it, after it had ceased to make contracts of this character and nature.

(*i.*) The municipal corporation of Savannah after asserting and declaring the said contracts for the use and occupation of ground-rent lots to be leases and the estate a leasehold estate, for seventy years and until it had determined not to dispose of any more of its domain on such terms, it is now estopped from denying that said contracts are leases.

(*j.*) The municipal corporation having determined that said ground-rent lots were not subject to taxation in the first ordinances, assessing and levying a tax on real estate in the corporate limits and having sold the greater portion of said ground-rent lots while said declaration of the municipal authorities was in minutes, ordinances, reports and official records and regularly announced
87 at sales of said lots, it is estopped from now asserting the right to levy any municipal tax upon the same, especially after it had ceased to dispose of its domain on the ground-rent plan.

(*k.*) The municipal corporation *have* asserted its ownership of the title to said ground-rent lots, in its official report, by the official entries on its minutes and publication of the claim openly and notoriously are estopped now from disclaiming such ownership and title for the purpose of imposing a tax on the lessees thereof.

(*m.*) Under the terms of the contract the only indebtedness enforcible by the corporation against the holders of said lots is the annual ground rents as they accrue in quarterly payments. The valuation money was never demandable, the corporation kept the title so long as the tenant retained the valuation money.

(*n.*) The obligation imposed by the contract contained in the ordinances and conveyance upon the holders of ground-rent lots so far as the municipal corporation is concerned is to annually pay into the city treasury in four quarterly payments the ground rent reserved to be paid, no other payments to the city are contracted for. And the obligation assumed by the municipal corporation upon the payment of the said ground rent in the manner directed the holders of said lots shall at all times thereafter peaceably and quietly have, hold, use, occupy, possess and enjoy the said lot and premises and receive and take the rents, issues and profits thereof and of every part thereof without the let, suit, trouble, eviction or denial of the said corporation or any person whatsoever acting under them or by virtue of their authority, and the subsequent

imposition by said municipal corporation of a tax on said lots in addition to said rents is a violation of the obligation of said contract.

(*o.*) That the municipal authorities did not assume to bear any assessment- or burdens that should be in common with other lot-holders, but such assessments and burdens should be borne by the tenant, but such assessments and burdens should not be for the benefit of the said municipal corporation, but for the use or benefit of the lot-holders in common for sidewalks or other betterments.

(*p.*) To change the relation from tenant paying annual ground rent to that of owner of the fee or absolute estate the holder of a ground-rent lot, if so inclined, was required to pay the valuation or purchase-money with what rent was due or unpaid at the time no other charge-, such as taxes or other dues to the municipal corporation, are required to be paid, and until such voluntary pay-
88 ment the fee-simple title remained in the city of Savannah, and the corporation could not levy and collect a tax on its own property.

(*q.*) The payment of the valuation money could not be directly or indirectly enforced or coerced by making the hold*ing* of said ground-rent lots mere owners by any act or ordinance of the city, such as the imposition of taxes on the lot in addition to the ground rent.

(*r.*) That the said contract made by the municipal authorities with the holders of said lots assured to said holders not only the use and occupation of the said lots forever so long as the ground rent should be paid, but also all and singular the advantages thereunto belonging, which advantages were the privilege of purchase of the lot at a fixed price, and the freedom from any other charges by the municipal corporation, and the right to receive and take the rents, issues, and profits thereof and every part thereof to their own use absolutely without any let, suit, trouble, eviction, or denial of the said corporation. And the assessment and levy of a tax upon said lots in addition to said annual rental by the municipal corporation is a violation of the obligations of said contract by the said municipal corporation.

That the city of Savannah is the holder of the absolute title to the said lots and that the holders thereof have only the use and occupation of the same, subject to the payment of an annual rent. And the city of Savannah being the owner of the fee, cannot levy and assess a tax upon the said lots and require the holders thereof to pay the same as if they were the holders of the fee.

The court erred in granting a nonsuit, but should have instructed the jury according to the principles above set forth, and directed a verdict for the plaintiff-.

That the court erred in excluding the following evidence of the witness, Alfred Haywood, which evidence was as follows: "The relation between the city and holders of these ground-rent lots were much those of landlord and tenant. So I considered them. The interest or title the city has claimed to have in said lots was a fee-simple interest." The said evidence being relevant and perti-

nent to the issues on trial as to the understanding of parties to the contract.

That the judge erred in granting the said nonsuit and dismissing said petition in all and every of the grounds contained in the statement of the law and the evidence as hereinbefore set forth.

That the judge erred in rendering said judgment whereby the said plaintiffs were deprived of the protection of the law and
89 denied their constitutional rights of protection against the impairment of the contract made by the said defendant, the municipal corporation, by increasing under the name of taxes the annual payments originally required to be paid to maintain and secure the use, occupation, and enjoyment of the property conveyed to said plaintiffs.

And now on the 6th day of June, A. D. 1898, within sixty days from the judgment rendered, and within thirty days from the adjournment of the court, the said plaintiffs tender this their bill of exceptions, and pray that the same may be signed and certified in terms of the law, that the errors complained of may be considered and corrected.

And the said plaintiffs specify as material to a clear understanding of the errors complained in connection with the evidence herein incorporated the following portions of the record:

1. The petition as amended, and the exhibits thereto.
2. The answer of the defendants and the exhibit thereto.
3. The judgment of the court granting the nonsuit and dismissing said cause.

SAUSSY & SAUSSY,
Solicitors for Petitioners.

Post-office address: Savannah, Ga.

I do certify that the foregoing bill of exceptions is true and contains all the evidence and specifies all of the record material to a clear understanding of the errors complained of, and the clerk of the superior court of Chatham county is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified, and certify the same as such and cause the same to be transmitted to the October term next of the supreme court that the errors alleged to have been committed may be considered and corrected.

Sav'h, Ga., June 6, 1898.

R. FALLIGANT,
Judge E. J. C., Geo.

90 GEORGIA, }
Chatham County. }

Clerk's office, superior court.

I, James K. P. Carr, clerk of said superior court, do hereby certify this instrument in printing and writing to be the true original bill of exceptions filed in this office in the case of David Wells *et al. versus* The Mayor and Aldermen of the City of Savannah *et al.*, in

equity, a copy of which bill of exceptions remains on file in this office.

In testimony whereof I have hereunto set my official signature and affixed the seal of said superior court, at Savannah, this 14th day of June, 1898.

[Seal of the Superior Court of Chatham County, Georgia.]

JAMES K. P. CARR,
Clerk S. C. C. C.

91 Clerk's office, supreme court of Georgia.

ATLANTA, *March* 5, 1900.

I hereby certify that the foregoing pages hereto attached contain a true copy of the bill of exceptions in the case therein stated, as appears from the original now of file in this office.

Witness my signature and the seal of said court, hereto affixed the day and year last above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON, *Clerk.*

92 WELLS ET AL.
v.
MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH ET AL.

By the COURT:

1. Even if the municipal authorities of any city in this State had, prior to the constitution of 1877, the power by contract with any of its citizens to perpetually exempt property from taxation, before a claim to such an exemption could be seriously entertained the existence of such a contract would have to be clearly and specifically shown. The record in this case fails to disclose any contract between the city of Savannah and the plaintiffs or any of their predecessors in title to the land claimed to be exempt from municipal taxation. Such a contract will not be implied merely from the fact that the marshal of the city customarily announced, when lands of like character were exposed for public sale, that the same were not subject to city taxes, nor from the fact that it was generally understood by the public that such property would be so exempt, nor from the further fact that for many years the city never undertook to exercise over this class of property its powers of taxation.
2. All other questions presented by the record in this case were specifically adjudicated by this court in its decision therein as reported in 87 Ga., 397.

93 LEWIS, *Justice:*

Over a hundred years ago the municipal authorities of the city of Savannah, by ordinances duly passed, resolved to expose to public sale certain lands known as "commons," then owned by the city.

One scheme provided for in these ordinances was to offer the lands for sale on what was known as the "ground-rent plan." The purchaser who elected to buy upon this plan was to pay quarterly a stipulated amount as rent for the land sold to him, and as long as such payments were continued he was to have the right of peaceful occupation and use of the premises forever. It is this class of property, now held by the successors in title to the original purchasers from the city, that the plaintiffs claim to be exempt from municipal taxation. There are two controlling questions presented by the record: First, have the plaintiffs such an interest in the title to the property as will subject them to the payment of taxes thereof? Second, has this property ever been perpetually exempted from the assessment of municipal taxes by virtue of any contract between the city and the original purchasers therefrom?

The first of these questions was specifically adjudicated adversely to the plaintiffs in error when this case was before this court at the March term, 1891—87 Ga., 397. We think the decision then rendered also disposed of the second question above mentioned, it being necessarily involved in the case; but, inasmuch as this court did not enter upon a specific discussion as to the contractual relations which the plaintiffs claim exist between themselves and the city of Savannah, and as their learned counsel in his argument before us insisted that at the last hearing of the case in the court below much additional evidence was introduced which strengthened his position that the city had by express contract exempted this property from taxation, we will briefly present the views which we entertain concerning this issue.

94 We are aware of no act passed by the State legislature that has ever conferred upon the city of Savannah the power to exempt from taxation any property owned by its citizens. There is respectable and weighty authority to the effect that a legislative body in the exercise of the sovereign powers of a State has no inherent right upon any consideration to enact a law perpetually exempting any particular species of property from the burden of taxation. Some of the decisions to which we refer are based upon the reasoning that from the very nature of legislative bodies one legislature cannot fix a limit to the power of another and subsequent one. Other authorities have treated such exemptions by legislative enactment as privileges or bounties only, revocable at the will of the legislature. It is unimportant, however, to go into a consideration of the many judicial expressions of opinion to be found upon this subject, among which may be cited the remarks of McCay, J., in State of Georgia *v.* Georgia Railroad & Banking Co., 54 Ga., 424, and the discussion of the question by Judge Bleckley in Atlantic & Gulf R. R. Co. *v.* State of Georgia, 55 Ga., 312. The Federal Supreme Court seems thoroughly committed to the proposition that a State is bound by an act of its legislature which for a good or valuable consideration perpetually exempts any particular class of property from taxation. In the case of Murray *v.* Charleston, 96 U. S., 432, it was held that the clause in the Constitution of the United States providing that "no State shall pass a law impairing the obli-

gation of contracts is a limitation upon the taxing power of a State, as well as upon all its legislation, whatever form it may assume.' See also Central Railroad & Banking Co. *v.* Georgia, 92 U. S, 665; Salt Company *v.* East Saginaw, 13 Wall., 376; State of New Jersey *v.* Wilson, 7 Cranch, 164; Cooley on Taxation, p. 66.

95 In the view we take of this case we find it unnecessary to pass upon the power of a State government or of its subordinate branches to enact such legislation or make such contracts with its citizens. We think there can be no sort of question that when such an exemption is claimed by any citizen of the government, it is incumbent upon him to clearly show the existence of an express contract, unambiguous and definite in creating by its terms the exemption claimed. Such a contract cannot be implied, and if there is any doubt concerning its existence or the exact and true meaning of its stipulations, the doubt ought always to be resolved in favor of the government upon which has been conferred the right to exercise this sovereign power. In this connection we quote the following pertinent extract from the opinion of Mr. Justice Swayne in the case of Tucker *v.* Ferguson, 22 Wall., 575, as laying down the correct rule upon this subject: "The taxing power is vital to the functions of government. It helps to sustain the social compact and to give it efficacy. It is intended to promote the general welfare; it reaches the interests of every member of the community; it may be restrained by contract in special cases for the public good, where such contracts are not forbidden; but the contract must be shown to exist. There is no presumption in its favor. Every reasonable doubt should be resolved against it. Where it exists it is to be rigidly scrutinized and never permitted to extend, either in scope or duration, beyond what the terms of the concession clearly require. It is in derogation of public right and narrows a trust created for the good of all."

Was such a contract shown in the present case? With the view of determining whether or not there was, we have naturally looked to the official action taken by the governing body of the city, either in its ordinances or resolutions providing for the plan upon which

96 the sales were to be made and the consequences and effect thereof, or in its deed of conveyance to the purchaser. Upon examining the various ordinances set out in the record we fail to find any reference whatever to the matter of exempting this property from taxation, and instead of finding any stipulation to that effect in the form of deed invariably made by the city to the various purchasers, there appears a clause directly negativing the idea that the city ever intended to grant a perpetual exemption of this property from the burden of taxation. In each instance it was recited in the deed given to the purchaser that the conveyance of the city was made and the rights of the purchaser thereunder were conferred "subject only to such assessments and burthens as shall be in common with other lot-holders in the said city." The term "assessment" is often used as a synonym of "taxes." Indeed, one of the definitions of this term given by Webster is "a tax." But even if this word, as used in the deed, does not necessarily refer to taxation,

the word "burthen," which is also therein employed, is certainly sufficiently comprehensive to include municipal taxes. Taken all together, the language adopted is clearly broad enough to embrace every burden then existing or which might thereafter be lawfully imposed upon other land-owners in the city. The deed was signed by both parties. Here, then, is a specific written agreement made between the parties to the contract relating to the sale of property by the city, whereby it is expressly declared that the property shall be held by the purchaser (and, of course, by his assigns) subject to any burden which might be borne in common by the holders of other lots in the city, necessarily including that of municipal taxation.

Plaintiffs in error contend, however, that the contract they insist upon is evidenced sufficiently by the conduct of the munici-
97 pal officers at the time the sales by the city took place. It was shown that when lots were put up for sale the city marshal publicly announced that they would not be subject to city taxes; that this was generally understood by the city at large, and that for nearly a hundred years after these sales first began the municipal authorities failed to tax the lands, and in various ordinances afterwards passed these ground-rent lands were exempted. The effect of these ordinances was merely to grant an exemption from taxes for the particular years to which they related. Mere non-user by a government of its power to levy a tax, it matters not for how long it continued, can never be construed into a forfeiture of the power. This question was directly passed upon by this court when the case was here before. As to this point, Chief Justice Bleckley said: "Whatever the expectation of purchasers or the unbroken practice of the city hitherto may have been, the mandate of the constitution of 1877 is to tax all property, save that expressly exempted by the legislature under constitutional authority, if any is taxed. That this mandate may have heretofore been disregarded is no reason why it should not be obeyed now."

There is an absolute want of any testimony in the record showing that the mayor and aldermen of the city of Savannah, by ordinance, resolution, or official action of any sort, ever authorized the marshal to make the public announcement above referred to in offering for sale the city's property. The effort to create a contract by such proof is simply an attempt to engraft upon a written instrument by parol a stipulation contrary to the terms of the writing itself. After the oral announcement made by the marshal, the city made its deed to the purchaser, the terms of which expressly negatived the assurance given by that officer to the public. Under no rule of law could such parol evidence be allowed to vary the terms of a written con-
tract. Besides all this, we fail to find in the record any tes-
98 timony showing that these particular plaintiffs or any of their predecessors in title bought any of the lots in question under the impression that the same would be exempt from taxes. Indeed, it is not shown that any of these lots were purchased at a sale at which the marshal made such an announcement as that above referred to. The evidence simply goes to the extent of show-

ing what was his custom in this particular and what was the general impression of the public in regard to the matter. For aught that appears, those who actually bought at these sales were fully advised as to the truth with reference thereto, if not prior to the sale, at least before they complied with their bids and accepted the city's conveyance of the lots purchased by them.

Our conclusion therefore is that even if the city of Savannah had the power claimed for it, the record utterly fails to make it appear that its authorities ever attempted to exercise such power.

Judgment affirmed, all the justices consurring.

99 Clerk's office, supreme court of Georgia.

ATLANTA, *March* 5, 1900.

I hereby certify that the foregoing is a true copy of the decision and opinion of the supreme court of Georgia in the case therein stated, as appears from the originals now of file in this office.

Witness my signature and the seal of said court, hereto affixed the day and year last above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON,
Clerk of the Supreme Court of Georgia.

100 Supreme Court of the State of Georgia.

ATLANTA, GA., *March* 17, 1899.

The honorable supreme court met pursuant to adjournment. The following judgment was rendered:

DAVID WELLS ET AL.
versus
MAYOR, ETC., OF SAVANNAH ET AL.

This case came before this court upon a writ of error from the superior court of Chatham county, and after argument had it is considered and adjudged that the judgment of the court below be affirmed.

All the justices concurring.

Bill of costs, $10.00.

Supreme Court of the State of Georgia.

CLERK'S OFFICE, ATLANTA, *March* 5, 1900.

Seal Supreme Court of the State of Georgia, 1845.

I certify that the above is a true extract from the minutes of the supreme court of Georgia, and that J. R. Saussy paid the above bill of costs.

Witness my signature and the seal of said court affixed the day and year last above written.

Z. D. HARRISON, *Clerk.*

101 CLERK'S OFFICE, SUPREME COURT OF GEORGIA,
ATLANTA, *March* 5, 1900.

I hereby certify that the foregoing and attached pages contain a true copy of the entire record in the case of David Wells, Thomas Ballantyne, Charles M. Gilbert and John H. Gilbert, Wm. Kehoe, Henry Blun, Daniel G. Purse, Rob't McIntire, Mary E. Douglass, and Dennis O'Connell, plaintiffs in error, *v.* Mayor and Aldermen of the City of Savannah and Rob't J. Wade, city marshal, defendants in error, the same being #7 of the eastern circuit, October term, 1898, of said supreme court, as appears from the records and files of said court.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON,
Clerk of the Supreme Court of Georgia.

102 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Georgia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Georgia, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between David Wells, Thomas Ballantyne, Charles M. Gilbert and John H. Gilbert, William Kehoe, Henry Blun, Daniel G. Purse, Robert McIntyre, Mary E Douglass, and Dennis O'Connell, plaintiffs, and The Mayor and Aldermen of the City of Savannah and Robert J. Wade, city marshal, defendants, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or
103 wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said David Wells, Thomas Ballantyne, Charles M. Gilbert, John H. Gilbert, William Kehoe, Henry Blun, Daniel G. Purse, Robert McIntyre, Mary E. Douglass, and Dennis O'Connell, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and

proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the eighth day of February, in the year of our Lord one thousand nine hundred.

Seal U. S. Circuit Court, N. D. Georgia.

O. C. FULLER,
Clerk of the Circuit Court of the United States for the Northern District of Georgia.

Allowed by—
T. J. SIMMONS,
Chief Justice Supreme Court of Georgia.

Filed in office Febr'y 13th, 1900.

Z. D. HARRISON.
Clerk S. C. Ga.

104 UNITED STATES OF AMERICA, *ss:*

To the Mayor and Aldermen of the City of Savannah and Robert J. Wade, city marshal, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Georgia, wherein David Wells, Thomas Ballantyne, Charles M. Gilbert, John H. Gilbert, William Kehoe, Henry Blun, Daniel G. Purse, Robert McIntyre, Mary E. Douglass, and Dennis O'Connell are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff- in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thos. J. Simmons, chief justice of the supreme court of the State of Georgia, this eighth day of February, in the year of our Lord one thousand nine hundred.

T. J. SIMMONS,
Chief Justice Supreme Court of Georgia.

105 Due and legal service of the within citation acknowledged this twelfth day of February, 1900.

SAM'L B. ADAMS,
Att'y for The Mayor and Aldermen of the City of Savannah & Robert J. Wade, City Marshal, the Def'ts.

Filed in office Feb'y 13, 1900.

Z. D. HARRISON,
Cl'k S. C. Ga.

106 In the Supreme Court of the State of Georgia.

DAVID WELLS, THOMAS BALLANTYNE, CHARLES M. Gilbert and John H. Gilbert, William Kehoe, Henry Blun, Daniel G. Purse, Robert McIntyre, Mary E. Douglass, and Dennis O'Connell	In Equity.
v.	
THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH and Robert J. Wade, City Marshal.	

To the Honorable Thomas J. Simmons, chief justice of the supreme court of the State of Georgia:

Your petitioners, David Wells, Thomas Ballantyne, Charles M. Gilbert and John H. Gilbert, William Kehoe, Henry Blun, Daniel G. Purse, Robert McIntyre, Mary E. Douglass, and Dennis O'Connell, respectfully show that on the seventeenth day of March, A. D. 1899, the supreme court of the State of Georgia entered a judgment in a case in which your petitioners were appellants and The Mayor and Aldermen of the City of Savannah, a municipal corporation, and Robert J. Wade, city marshal, were appellees.

That said supreme court of the State of Georgia is the highest court of the State of Georgia in which a decision in said suit could be had, and that said judgment so rendered was against your petitioners and was a final judgment in said cause.

That in said judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of your petitioners, all of which will more in detail appear from the assignment of errors which is filed with this petition.

107 That said suit and the judgment of the supreme court of the State of Georgia drew in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or therein was drawn in question the validity of a statute or ordinance of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, *that* the decision was in favor of such their validity, or therein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, and therein a manifest error hath happened, to the damage and prejudice of your petitioners.

Wherefore your petitioners pray for an allowance of a writ of error in this behalf from the Supreme Court of the United States to the supreme court of the State of Georgia for the correction of the errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

JOACHIM R. SAUSSY,
POPE BARROW,
Attorneys for Plaintiffs in Error.

Filed in office February 13, 1900.

Z. D. HARRISON,
Clerk S. C. Ga.

108 In the Supreme Court of the State of Georgia.

DAVID WELLS, THOMAS BALLANTYNE, CHARLES M. Gilbert and John H. Gilbert, William Kehoe, Henry Blun, Daniel G. Purse, Robert McIntyre, Mary E. Douglass, and Dennis O'Connell
v.
THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH and Robert J. Wade, City Marshal.
} In Equity.

This 8 day of February, A. D. 1900, came the plaintiffs, by their attorneys, and filed herein and presented to this court their petition praying for the allowance of a writ of error from the Supreme Court of the United States to the supreme court of the State of Georgia, intended to be urged by them, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, this court, being the court rendering the judgment or passing the decree complained of, does allow the writ of error upon the plaintiffs giving bond according to law in the sum of two hundred and fifty dollars.

In witness whereof this order, allowing said writ of error, is signed by Thomas J. Simmons, chief justice of the said supreme court of the State of Georgia, this 8 day of February, in the year of our Lord nineteen hundred.

T. J. SIMMONS,
Chief Justice Supreme Court of Georgia.

Filed in office February 13, 1900.

Z. D. HARRISON,
Clerk S. C. Ga.

109 Know all men by these presents that we, David Wells, Thomas Ballantyne, Charles M. Guilbert, William Kehoe, Henry Blun, and Daniel G. Purse, as principals, and David Y. Dancy, as surety, are held and firmly bound unto the Mayor and Aldermen of the City of Savannah and Robert J. Wade, city marshal, in the full and just sum of two hundred and fifty dollars, to be paid to the said The Mayor and Aldermen of the City of Savannah and Robert J. Wade, city marshal, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this eighth day of February, in the year of our Lord one thousand nine hundred (1900).

Whereas lately, at a term of the supreme court of the State of

Georgia, in a suit depending in said court between David Wells, Thomas Ballantyne, Charles M. Guilbert, John H. Guilbert, William Kehoe, Henry Blun, Daniel G. Purse, Robert McIntyre, Mary E. Douglass, and Dennis O'Connell, plaintiffs, and The Mayor and Aldermen of the City of Savannah and Robert J. Wade, city marshall, defendants, a judgment was rendered against the said David Wells, Thomas Ballantyne, Charles M. Guilbert, John H. Guilbert, William Kehoe, Henry Blun, Daniel G. Purse, Robert McIntyre, Mary E. Douglass, and Dennis O'Connell, and the said David Wells, Thomas Ballantyne, Charles M. Guilbert, John H. Guilbert, William Kehoe, Henry Blun, Daniel G. Purse, Robert McIntyre, Mary E. Douglass, and Dennis O'Connell having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The Mayor and Aldermen of the City of Savannah and Robert J. Wade, city marshal, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said David Wells, Thomas Ballantyne, Charles M. Guilbert, John H. Guilbert, William Kehoe, Henry Blun, Daniel G. Purse, Robert McIntyre, Mary E. Douglass, and Dennis O'Connell shall prosecute the writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

DAVID WELLS.	[SEAL.]
THOMAS BALLANTINE.	[SEAL.]
CHAS. M. GILBERT.	[SEAL.]
WM. KEHOE.	[SEAL.]
HENRY BLUN.	[SEAL.]
D. G. PURSE.	[SEAL.]
D. Y. DANCY.	[SEAL.]

Sealed and delivered in presence of—

WILLIAM F. CONSTANTINE,
[SEAL.] *Notary Public, Chatham County, Georgia.*

Approved by—

T. J. SIMMONS,
Chief Justice of the Supreme Court of the State of Georgia.

Filed in office Feb'y 13th, 1900.

Z. D. HARRISON,
Clk S. C. Ga.

110 In the Supreme Court of the United States.

DAVID WELLS, THOMAS BALLANTYNE, Charles M. Gilbert, John H. Gilbert, William Kehoe, Henry Blun, Daniel G. Purse, Robert McIntyre, Mary E. Douglass, and Dennis O'Connell, Plaintiffs in Error, *v.* THE MAYOR AND ALDERMEN OF THE City of Savannah and Robert J. Wade, City Marshal*l*, Defendants in Error.	Error to the Supreme Court of the State of Georgia.

Assignment of Error.

1. The supreme court of Georgia erred in that its finding and judgment are contrary to law.

2. The supreme court of Georgia erred in that its findings are contrary to the evidence.

3. The supreme court of Georgia erred in affirming the judgment of the superior court of Chatham county, Georgia

4. The supreme court of Georgia erred in holding that the record of the case failed to disclose any contract between the said mayor and aldermen of the city of Savannah and the said plaintiffs, or any of their predecessors in title to the land claimed to be exempt from municipal taxation.

4. The supreme court of Georgia erred in holding in affirmation of a former decision of the court upon the hearing of a writ of error from a refusal of a temporary injunction that under the terms of sale of the lots of land under the ground-rent plan the mayor and aldermen of the city of Savannah parted with their title to the premises and had not an iota of interest in the said lots of land so sold.

110½ 6. The supreme court of Georgia erred in holding that under the ordinance and conveyances of the mayor and aldermen of the city of Savannah the reservation of the rents and the covenants of quiet enjoyment in the conveyances under which plaintiffs and those under whom they claimed did not prohibit the mayor and aldermen from imposing any other charges or payments to it in the holders of said lots of land under the name of taxes or any other charges.

7. The supreme court of Georgia erred in sustaining the judgment of the superior court of Chatham county, Georgia, dismissing complainants' bill of complaint under the pleadings and evidence that the contract made by the municipal corporation did not prevent the mayor and aldermen of the city of Savannah from imposing on the said lots of land a tax in addition to the ground rent reserved in the original lease.

8. The supreme court of Georgia erred in holding that the case failed to disclose any contract between the mayor and aldermen of

the city of Savannah and the plaintiffs or any of their predecessors in title to the land claimed to be exempt from municipal taxation, when the evidence showed that the estate conveyed was a leasehold interest, with a certain rent reserved and an express covenant of quiet enjoyment based upon the payment of said rent reserved and without any reservation of any power in the municipal corporation to increase the redendum in any manner.

9. The supreme court of the State of Georgia erred in finding that the terms of sale as contained in the public notices and announcements, the covenants in the conveyances, and the ordinances of the city passed consecutively for seventy years exempting the said ground-rent lots from city taxation did not amount to an express contract, and could be violated by the municipal authorities at their pleasure.

111 10. The supreme court of the State of Georgia erred in refusing to adjudge that under the evidence submitted the absolute title to the premises occupied and held by the plaintiffs in error was in the mayor and aldermen of the city of Savannah, who by their covenant of quiet enjoyment contracted with the plaintiffs in error and those under whom they claimed that they should have and enjoy the said premises, with all the advantages thereof, without let, suit, eviction, or denial of the grantor, upon the payment of the said rent reserved, and the said mayor and aldermen could not change the terms of said contract or violate said covenant by increasing the annual payments to be made to it by the said plaintiffs in error in the name and under the guise of taxes upon said lots so granted.

11. The supreme court of the State of Georgia erred in refusing to adjudge and decree that the mayor and aldermen of the city of Savannah, having asserted its ownership and title to the said ground-rent lots in its official reports by its official entries on its minutes and having by its ordinances and announcements and official declarations openly admitted that the said ground-rent lots were not subject to municipal taxation, were estopped from disclaiming such ownership and from attempting to impose such taxation upon such lots.

12. The supreme court of the State of Georgia erred in refusing to adjudge and decree under the evidence submitted in the record that the obligations imposed by the contract contained in the ordinances, conveyances, and announcements made at the sales imposed on the plaintiffs in error and those holding ground-rent lots, so far as the municipal corporation is concerned, the duty to pay annually into the city treasury in four quarterly payments the ground rent reserved to be paid, and that the obligation imposed on the mayor and aldermen of said city, the defendants in error, was to
112 secure to the holders of said ground-rent lots the peaceable and quiet use, occupation, and enjoyment of said lots, to take the rents, issues, and profits thereof and of every part thereof without let, suit, eviction, or denial of said mayor and aldermen or any person acting under them or by their authority on the payment of said ground rent in the manner directed, and that the subsequent

imposition by the said mayor and aldermen of a municipal tax on said lots in addition to said ground rent was a violation of said obligation of said contract.

13. The supreme court of the State of Georgia erred in refusing to hold that under the evidence submitted the relation created between the mayor and aldermen of the city of Savannah and the holders of these ground-rent lots precluded the said mayor and aldermen from imposing any tax upon the lot-, the same continuing the property of said mayor and aldermen until the purchase-money should be paid.

14. The supreme court of the State of Georgia erred in disregarding the undisputed evidence that, while the said mayor and aldermen levied and collected a tax upon the improvements erected on said ground-rent lots by the holders thereof, they observed the contract of quiet enjoyment in the conveyance, and the agreement announced at the time the said lots were disposed of that said lots should be free from city taxes, and by express ordinances declared the same exempt from city taxes and did exempt the same from the time of the first sale of said lots, in 1791, to the year 1890.

15. That the supreme court of the State of Georgia erred in refusing to recognize the difference between the liability of the holders of said lots to taxation by the State on their interest in said lots and their liability to the mayor and aldermen only for ground
113 rent and not for city taxes so long as the lots were held under the terms of the original lease or conveyance.

16. That the supreme court of the State of Georgia erred in refusing to adjudge that under the evidence the said municipal corporation is the holder of the absolute title in fee to the said lots, and that the holders had only the use and occupation of the same so long as they paid the rent reserved, and that the said municipal corporation, being the owner in fee, cannot levy and assess a tax on their own property and require the holders thereof to pay the same, in addition to the said rent reserved.

17. That the supreme court of Georgia erred in refusing to adjudge that the imposition by the mayor and aldermen of the city of Savannah of a tax on these ground-rent lots, in addition to the rent reserved, was a violation of the contract, which reserved only a certain rent, whereby the city increased the annual payment to it on these lots beyond the amount specified in the contract.

18. That the supreme court of Georgia erred in refusing to adjudge that the said contract made by the municipal authorities with the holders of said ground-rent lots assured to said holders not only the use and occupation of said lots forever, so long as the ground rent should be paid, but also all and singular the advantages thereunto belonging, which advantages were the privilege of the purchase of the lot at a fixed price and the freedom from any other charges by the municipal corporation, and the right to receive and take the rents, issues, and profits of said lots without any let, suit, trouble, eviction, or denial of the said corporation, on the payment of a fixed annual rent only, and that the assessment and levy of a

tax on said lots, in addition to said annual rent by said municipal corporation, was a violation of the obligations of said contract.

114 19. That the supreme court of the State of Georgia erred in rendering said judgment, whereby the said plaintiffs were deprived of the protection of the law and denied their constitutional rights of protection against the impairment of the contract made by the said defendant, the municipal corporation, by increasing under the name of taxes the annual payments originally required to be paid to maintain and secure the use, occupation, and enjoyment of the property conveyed to said plaintiffs.

20. That the supreme court of Georgia erred in that its decision in this case is in favor of the validity of an ordinance or law passed by the mayor and aldermen of the city of Savannah which impairs the obligation of a prior contract made by said mayor and aldermen and violates the constitutional rights of the plaintiffs in error secured in and by said contract.

JOACHIM R. SAUSSY,
POPE BARROW,
Attorneys for Plaintiffs in Error.

Filed in office February 13, 1900.
Z. D. HARRISON,
Clerk S. C. Ga.

115 Clerk's office, supreme court of Georgia.

ATLANTA, *March* 5, 1900.

I hereby certify that the foregoing pages hereto attached contain the original writ of error and original citations in the case of David Wells *et al.*, plaintiffs in error, *v.* Mayor and Aldermen of the City of Savannah *et al.*, defendants in error, together with a true and complete copy of the record and proceedings had in said case in the supreme court of the State of Georgia, as appears from the records and files of this office.

Witness my signature and the seal of said court, hereto affixed the day and year last above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON,
Clerk of the Supreme Court of Georgia.

Endorsed on cover: File No., 17,669. Georgia supreme court. Term No., 222. David Wells, Thomas Ballantyne, Charles M. Gilbert, John H. Gilbert, William Kehoe, Henry Blun, Daniel G. Purse, Robert McIntyre, Mary E. Douglass, and Dennis O'Connell, plaintiffs in error, *vs.* The Mayor and Aldermen of the City of Savannah and Robert J. Wade, city marshal. Filed March 10th, 1900.